

UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF MASSACHUSETTS  
(Boston Division)

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UNITED STATES SECURITIES AND  
EXCHANGE COMMISSION,

Plaintiff,

v.

STEVEN E. NOTHERN,

Defendant.

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Civil Action No. 05-10983 (NMG)

**DECLARATION OF ROBERT E. TOONE FILED IN  
SUPPORT OF DEFENDANT'S MOTION FOR SUMMARY JUDGMENT**

Robert E. Toone, pursuant to 28 U.S.C. § 1746, declares under penalty of perjury as follows:

1. I am an attorney for Steven E. Nothern in the above-referenced matter. I am a member of the Massachusetts bar and the bar of this Court. I make this declaration based upon my own personal knowledge, upon public records, and upon the documents related to this action.
2. A true and correct copy of the Declaration of Clyde H. Bentley, Ph.D. executed on May 29, 2008 is attached hereto as Exhibit A.
3. A true and correct copy of the Stipulation and Agreement signed by the parties on March 21, 2008 is attached hereto as Exhibit B.
4. True and correct excerpts from the deposition transcript of Peter Fisher (August 8, 2006) are attached hereto as Exhibit C.
5. A true and correct copy of the deposition transcript of Michele Davis and cited exhibits (February 11, 2008) are attached hereto as Exhibit D.

6. A true and correct copy of the deposition transcript of Elizabeth Holahan and cited exhibits (August 23, 2006) are attached hereto as Exhibit E.

7. A true and correct copy of the deposition transcript of Tony Fratto and cited exhibit (August 30, 2006) are attached hereto as Exhibit F.

8. A true and correct copy of the deposition transcript of Peter Davis and cited exhibits (April 19-20, 2006) are attached hereto as Exhibit G.

9. True and correct excerpts from the deposition transcript of Jill Ouseley (July 24, 2006) are attached hereto as Exhibit H.

10. True and correct excerpts from the deposition transcript of Paul Malvey (June 23, 2008) are attached hereto as Exhibit I.

11. A true and correct copy of the deposition transcript of Steven Nothern (January 30-31, 2007) and cited exhibit are attached hereto as Exhibit J.

12. True and correct excerpts from the deposition transcript of Lula Tyler (September 14, 2006) are attached hereto as Exhibit K.

13. True and correct excerpts from the deposition transcript of Roger Anderson (June 20, 2006) are attached hereto as Exhibit L.

14. True and correct excerpts from the deposition transcript of Elnora Bowser (February 12, 2008) are attached hereto as Exhibit M.

15. True and correct excerpts from the deposition transcript of Steven Berardi (February 12, 2008) are attached hereto as Exhibit N.

16. True and correct excerpts from the deposition transcript of Brian Roseboro and corresponding exhibit (June 27, 2006) are attached hereto as Exhibit O.

17. True and correct excerpts from the deposition transcript of Jill Cetina (February 8, 2008) are attached hereto as Exhibit P.

18. True and correct excerpts from the deposition transcript of Brian Collins and corresponding exhibit (May 12, 2006) are attached hereto as Exhibit Q.

19. True and correct excerpts from the deposition transcript of Frances Anderson and corresponding exhibit (August 3, 2006) are attached hereto as Exhibit R.

20. True and correct excerpts from the SEC investigative testimony of Robert Falconer (November 28, 2001) are attached hereto as Exhibit S.

21. True and correct excerpts from the deposition transcript of David Harris (July 25, 2006) are attached hereto as Exhibit T.

22. True and correct excerpts from the deposition transcript of Verizon Business (Anne Wilson) (October 6, 2006) are attached hereto as Exhibit U.

23. True and correct excerpts from the deposition transcript of John Cadogan (November 29, 2006) are attached hereto as Exhibit V.

24. True and correct excerpts from the deposition transcript of David Kennedy (June 26, 2006) are attached hereto as Exhibit W.

25. True and correct excerpts from the deposition transcript of Geoffrey Kurinsky (September 7, 2006) are attached hereto as Exhibit X.

26. True and correct excerpts from the deposition transcript of Richard Smith (June 19, 2006) are attached hereto as Exhibit Y.

27. True and correct excerpts from the deposition transcript of Jeffry Davis (May 1, 2008) are attached hereto as Exhibit Z.

28. True and correct excerpts from the SEC investigative testimony of Steven Nothern (December 4, 2001) are attached hereto as Exhibit AA.

29. True and correct excerpts from the deposition transcript of Bloomberg LLP (Patrick Eldridge) (November 2, 2006) are attached hereto as Exhibit BB.

30. True and correct excerpts from the SEC's Responses to Nothern's Interrogatories are attached hereto as Exhibit CC.

31. A true and correct copy of a Reuters article produced by the SEC – Daniel Sternoff, "Wall Street sees red over leak of T-bond's demise," Reuters, Oct. 31, 2001 – is attached hereto as Exhibit DD.

32. A true and correct copy of the Minutes of the Meeting of the Treasury Borrowing Advisory Committee of the Bond Market Association (January 31, 2001) is attached hereto as Exhibit EE.

33. A true and correct copy of a letter from Thomas McGivern in the Office of General Counsel at the Department of the Treasury to John A. Shope at Foley Hoag LLP, dated November 2, 2006, is attached hereto as Exhibit FF.

I declare under penalty of perjury that the foregoing is true and correct. Executed on June 16, 2008.

/s/ Robert E. Toone

**CERTIFICATE OF SERVICE**

I hereby certify that this document, filed through the ECF system, will be sent electronically to the registered participants as identified on the Notice of Electronic Filing (NEF).

/s/ Robert E. Toone

**Exhibit A**

**Declaration of Clyde H. Bentley, Ph.D.  
(May 29, 2008)**

UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF MASSACHUSETTS

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UNITED STATES SECURITIES AND  
EXCHANGE COMMISSION,

Plaintiff,

v.

STEVEN E. NOTHERN,

Defendant.

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Civil Action No. 05-10983 (NMG)

**DECLARATION OF CLYDE H. BENTLEY, Ph.D.**

Clyde H. Bentley, pursuant to 28 U.S.C. § 1746, declares under penalty of perjury as follows:

1. I am a tenured associate professor at the Missouri School of Journalism at the University of Missouri in Columbia, Missouri. I have held this position since 2001.
2. I have spent most of my career as a newspaper journalist, both as a reporter and copy editor and as a news and publication manager. My academic career has focused on the practical application of theory and research in the news media, with emphases on online journalism, user-generated content, and blogging. A true and accurate copy of my curriculum vitae is attached as Exhibit A to this declaration.
3. I have been asked by attorneys for Steven E. Nothorn to provide an expert opinion regarding the quarterly refunding press conference held by the U.S. Department of Treasury on October 31, 2001 and the embargoed news release issued at that press conference.

4. In addition to the Complaint in this matter, I have read the transcripts and exhibits for the depositions of the following individuals: Stephen Berardi, Brian Collins, Michele Davis, Peter Davis, Peter Fisher, Elizabeth Holahan, Steven Nothern, and Tony Fratto.

5. In general use, a news or press embargo is a reverse “deadline” for journalists. Instead of the time by which a story must be written, it is the first time at which the story may supposedly be published. But unlike deadlines imposed by editors and publishers, an embargo is an artificial time constraint requested by an external entity – the news source.

6. Embargoes have traditionally been used to advance the narrow interests of news sources and the anti-competitive interests of established media organizations.

7. The embargo has its roots in the days when newspapers were openly partisan, as indicated by their names (*e.g.*, “Tallahassee Democrat,” “Springfield Republican”). It was a common practice for politicians to hold news conferences or release information just in time for publication in the newspaper that supported them.

8. Embargoes serve a similar function today. Embargoes are often timed to favor certain television newscasts, so that the source gets “face time” on television, or to ensure maximum publicity by giving an embargoed news release to particular newspaper or magazine in advance of releasing it to the media in general.

9. Embargoes are also anti-competitive insofar as they give advance notice of information to a limited number of favored media organizations, instead of releasing the information to the general public. They coddle reporters of lesser skill who do not have the ability to write quickly and accurately, preventing reporters with superior ability from using those professional skills as a competitive edge.

10. While some have theorized that embargoes give journalists time to report and write accurate articles on complex issues, there is no evidence that embargoes actually accomplish this goal or otherwise enhance the quality of reporting.

11. The advent of the World Wide Web in the 1990s was a death knell for press embargoes. First, the Internet increased the immediacy of news delivery to micro-seconds, instead of the hours or days required by the traditional media to produce and publish stories. Second, and even more important, the Internet removed the monopoly on the control and distribution of information enjoyed by the traditional media.

12. As Treasury's Assistant Secretary for Public Affairs Michele Davis herself acknowledged, embargoes were designed for a time when reporters "often had to go through an editors desk to get onto the wire," whereas "now the technology is different." In the Internet era, where journalists and non-journalists alike can release information to the world instantaneously, requests for press embargoes are routinely disregarded. For example, after the White House distributed at 8:21 p.m. the text of President Bush's 2007 State of the Union Address with a caption stating "EMBARGOED – this cannot be used until delivery at 9:01:30PM EDT," the popular web site Drudge Report posted it minutes later. The White House took no action, stating "it's hard to police the embargo." An account of this incident is set forth at [http://blogs.abcnews.com/theblotter/2007/01/drudge\\_breaks\\_w.html](http://blogs.abcnews.com/theblotter/2007/01/drudge_breaks_w.html).

13. Today, journalists are able to identify newsworthy items in a government announcement and report them to the public – via radio, television, a wire service, or the Internet – in a matter of seconds. The "embargo" concept is outdated because it is premised on preparation of a single story for a publication with a single publication time, rather than the continual updates and revisions provided by electronic media.

14. At her deposition, Assistant Secretary Davis testified that embargoes are “useful when there’s information that needs to be digested so that you don’t just get someone scanning a piece of paper and throwing something in the wire that’s out of context.” It is important to observe that Ms. Davis has neither formal training nor professional experience in the news media. She is what working journalists call a “flak” – a public relations / public affairs worker, whose expertise is manipulating the news, not reporting it.

15. In fact, contrary to Assistant Secretary Davis’s opinion, any reasonably skilled reporter would have been able to quickly identify the “lead” in Treasury’s October 31, 2001 press release and post a powerful and accurate one-sentence story: “The Treasury Department today suspended sales of the benchmark 30-year ‘long bond.’” This story could have been followed in succeeding minutes and hours by more detailed stories with additional background information. No valid newsgathering purpose was advanced by Treasury’s request that journalists refrain from releasing this information for a full hour after its press conference began.

16. There are no generally accepted rules of conduct or professional procedures for the treatment of press embargoes. Some journalists choose to honor requested embargoes, while others choose to ignore them. Many journalists believe that embargoes are unnecessary and even unethical. There is no convention that requires a journalist to state whether he or she will comply with a requested embargo before learning and reporting any news that may be announced. And the mere fact that a journalist may have complied or agreed to comply with an embargo request in the past does not mean that he or she will necessarily comply with all embargo requests in the future.

17. Treasury officials were very casual in their use of embargoes. There were no written policies and procedures on the use of embargoes or the release of market-sensitive

information, and Treasury did not define the term “embargo” to the attendees at the press conference on October 31, 2001. Rather, as Assistant Secretary Davis testified, “all [these] embargo things are usually determined by the circumstances of the announcement or the release,” and there was no specific rule on how embargo times were set for quarterly refunding press conferences.

18. In fact, Treasury officials themselves did not agree on what the embargo meant. For example, spokesperson Elizabeth Holahan testified that reporters could disclose embargoed information to “members of the news organization, like an editor,” but not “to the general public.” By contrast, Assistant Secretary Davis testified that reporters could disclose embargoed information to the public for “a news gathering purpose” – for example, to obtain a market participant’s reaction to the news.

19. Many embargoes are simply requests that journalists believe that they are completely free to disregard. In this case, the embargo announced by Treasury at its press conference on October 31, 2001 was nothing more than a request by Treasury, to which none of the reporters in attendance actually agreed. It is common for journalists to disregard embargo requests to which they have not expressly agreed.

20. Even most journalists who agree to embargo requests believe that the ultimate choice to honor or break the embargo remains theirs. For example, embargo agreements are frequently disregarded when journalists or editors believe that they are arbitrary, the information is already circulating, the information is available through other sources, or the importance of the story is compelling.

21. There are no accepted means of enforcing embargoes in the journalism profession. There is no organization or authority that can effectively censure an American

journalist. A news source has no ability to enforce an embargo other than to restrict a journalist's access to information in the future, and even that sanction is untenable if the source depends on the journalist for dissemination of its information. As Assistant Secretary Davis testified, Treasury's response to embargo violations ranged from "sort of a slap on the wrist to losing your Treasury press pass, depending how serious it is." Treasury never told reporters about any penalties that it might impose on those who disregard its embargo requests.

22. The embargo announced by Treasury at its October 31, 2001 press conference did not serve Treasury well. It did not facilitate the simultaneous release of information on Treasury's decision to suspend the 30-year bond, since that information was not secure. While the key information could have been clearly and accurately reported in one sentence, the approximately 35-minute period from the conclusion of the press conference (9:25 a.m.) to the announced embargo time (10:00 a.m.) was insufficient for reporters to substantially research the background of Treasury's action in a manner that would change the immediate "first lead" story. As noted, with electronic media, such a story could follow as the morning proceeded.

23. Treasury's embargo was also anticompetitive because it gave advance notice to a limited number of media outlets (including CNBC, the New York Times, and the Wall Street Journal) who received the news by e-mail ahead of the embargo, and to those reporters who had the means to attend the press conference in person. The advance disclosure to CNBC before the press conference began, and the early e-mails to the New York Times and the Wall Street Journal, suggest a desire to curry favor with these influential media. Other news outlets, including regional news media in Boston and elsewhere, did not receive any pre-embargo information unless they could afford to maintain a staff reporter or wire service representative in Washington. There was no e-mail of the press release to the press officer's general press list

until after 10:00 a.m. Clearly, Treasury gave preferential treatment to certain media outlets, much the way 19th-century politicians favored the partisan press.

24. Technology was readily available in 2001 to allow a federal agency like Treasury to distribute text, audio, and video information to the press and the public at a precise moment. For example, Treasury could have simultaneously posted the announcement on its web site, e-mailed the announcement to media around the country, and conducted a press conference by webcast. In addition, if it wished, Treasury could have preserved the confidentiality of its information even while giving advance notice of information to a select group of journalists through the use of “lockdown” procedures – the same procedures which Treasury used for other market-sensitive announcements at the time, but not its quarterly refunding announcements. Indeed, following the events of October 31, 2001, Treasury did adopt “lockdown” procedures for its quarterly refunding announcements.

25. In sum, Treasury’s declaration of an embargo on October 31, 2001 did not bind the journalists in attendance to comply with it, and in any event was completely unnecessary.

I declare under penalty of perjury that the foregoing is true and correct. Executed on May 29, 2008.

A handwritten signature in black ink, appearing to read "Clyde H. Bentley", is written over a horizontal line.

Clyde H. Bentley

## **EXHIBIT A**

### **Curriculum Vitae of Clyde H. Bentley**

## **Curriculum vitae**

### **Education**

#### **The University of Oregon**

Doctor of Philosophy, School of Journalism and Communication. June 2000.

#### **The University of Texas at Austin**

Master of Arts in journalism, minor in management. May 1990.

#### **Pepperdine University at Los Angeles**

Bachelor of Arts in Journalism (cum laude), 1973.

#### **Shasta Community College**

Associate of Arts in Journalism, 1971.

### **Academic Experience**

#### **Associate Professor**

##### **University of Missouri**

##### **Columbia, Missouri**

Teach in the print and digital news sequence of the Missouri School of Journalism, with additional teaching in research methods and media management. Founded MyMissourian, a citizen journalism Web publication with a print edition. Member of the Center for the Digital Globe. Member of the Center on Religion and the. August 2001 to present

#### **Adjunct Assistant Professor**

##### **University of Oregon**

##### **Eugene, Oregon**

Taught both a large lecture class in mass media and a small seminar for pre-journalism majors plus a lab-based class in newspaper editing. June 2000 to June 2001

#### **Graduate Teaching Fellow**

##### **University of Oregon**

##### **Eugene, Oregon**

Taught reporting, newspaper editing, media management and mass media & society . Assisted with newspaper editing class for four terms, overseeing all newspaper and new media editing labs. Also served as assistant coordinator for a journalism workshop for minority high school students for two years. September 1997 to June 2000

#### **Journalism Instructor**

##### **Shasta College**

##### **Redding, California**

Taught news reporting and mass communication classes at a community college with a long reputation of quality. Adviser to college newspaper. January to June 1997.

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**Graduate Teaching Assistant**  
**University of Texas**  
**Austin, Texas**

Supervised the news-writing laboratory, assisted with newspaper design class. 1989-90

**Substitute Journalism Instructor**  
**Shasta College**  
**Redding, California**

Taught introductory reporting classes while the regular instructor was ill, 1977.

**Professional Experience**

**General Manager**  
**The East Oregonian**  
**Pendleton, Oregon**

Directed the financial, advertising, operational and personnel functions of a 12,700-circulation daily newspaper. Formulated and administered a multi-million dollar budget, managed 80 employees and maintained strong records of profitability and consumer satisfaction. July 1993 to January 1997.

**Advertising Manager**  
**The Irving News**  
**Irving, Texas**

Directed the retail advertising department of the flagship of the A.H. Belo Corporation's suburban newspaper group. Recruited and trained the sales staff, developed the marketing strategy and worked closely with both the readers and business community. April 1991 to July 1993.

**Marketing Director**  
**The Recorder-Times**  
**San Antonio, Texas**

Directed a 17-person sales staff, planned market strategy, researched demographics, produced marketing materials and revamped marketing strategy to produce record profits. April 1990 to January 1991.

**Managing Editor**  
**The Coeur d'Alene Press**  
**Coeur d'Alene, Idaho**

Formulated strategic plan and budget for the editorial department, wrote editorials, coordinated newsroom efforts and provided community relations for a daily newspaper. Prior positions at paper included news editor and city editor. June 1981 to June 1988.

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**Assistant to the Publisher**

**The Headlight-Herald**

**Tillamook, Oregon**

Managed the production department, directed public relations and sold advertising for a four-newspaper group. January 1980 to June 1981.

**Editor**

**The Tahoe World**

**Tahoe City, California**

Managed a prize-winning weekly newspaper with an absentee publisher. October 1978 to December 1979.

**Managing Editor**

**The Redding Outlook**

**Redding, California**

Managed the news staff of a large suburban newspaper. Also supervised a rural weekly and an 11-state agricultural publication. September 1976 to October 1978.

**Reporter**

**The Record-Searchlight**

**Redding, California**

Covered a variety of beats for a daily newspaper. April 1973 to September 1976.

**Intern**

**Newsweek Magazine, Los Angeles Bureau**

**Los Angeles, California**

Covered national and regional stories, filed bureau reports on Hollywood personalities. September 1972 to April 1973.

**Reporter**

**The Community Informer**

**Los Angeles, California**

Covered hard news and features for an urban weekly newspaper part time while pursuing an undergraduate degree. April 1972 to August 1972.

## **Other experience**

### **Founding Faculty**

MyMissourian, a citizen journalism publication. Oct. 4, 2004- present

### **Freelance writer**

Magazine articles include a major feature for Trailer Boat, 1988.

### **Radio announcer**

Taped a daily promotion for the Coeur d'Alene Press, 1987-1988.

### **Television**

NBC interview, 1987. Panelist for a local "Meet the Press" show, 1975. Editorial writer-announcer, 1971

### **Dissertation:**

"Make My Day: Ritual, Dependency and the Habit of Newspaper Reading"

Explores, via three empirical studies and one qualitative study, the power of ritual and habit to affect the consumption of newspapers. June 2000.

### **Book Chapters:**

"Internet advertising in online newspapers."

In D. W. Schumann & E. Thorson (Eds.), *Internet advertising: Theory and practice*. Mahwah, NJ: Lawrence Erlbaum Associates. (2006)

"The citizen journalism movement: MyMissourian as a case study." In M. Tremayne (Ed.), *Blogging, citizenship and the future of media (in press)*. New York: Routledge, Inc. (2006) With Hamman, B., Littau, J., Meyer, H., Watson, B., & Welsh, B.

## **Academic Papers**

"Citizen Journalism and the TMC: User content as a driver for a free-circulation print newspaper." Presented to the Newspaper Division at the AEJMC annual conference, Washington, D.C, August 2007.

"Constructing community: Missouri students practice citizen journalism in the heartland." *Foundation Update*. Newspaper Association of America. Winter 2006. With Hans Meyer and Jeremy Littau.

"Reconnecting with the audience: What they say – not what we think – is what counts." *Nieman Reports*, 59(4), 26-28. Winter 2006

"Interactive journalism summit: When consumers become creators". *J-Lab* Web site August, 2005. <http://www.j-lab.org/aejmc05clyde.shtml>

"MyMissourian: A case study of open source journalism" Presented to the Communications Technology and Policy Division at the AEJMC annual conference, San Antonio, Texas, August 2005. With Brian Hamman, Hans Ibold, Hans Meyer and Jeremy Littau.

"Mac-in-the-box:" Expertise on the Go" presented at The Digital Revolution: The Impact of Digital Media and Information Technologies October 14-16, 2004, Columbia, South Carolina

"Digitizing the News: Innovation in Online Newspapers" (Book Review). Journalism & Mass Communication Quarterly, Autumn2004, Vol. 8, Issue 3.

"Digital Contest: Newspapers and Web Advertising" in Savid W. Schumann and Esther Thorson (Eds.) Internet Advertising, Theory and Research, Mahwah, NJ: Lawrence Earlbaum. (forthcoming)

"You've got news: A Permission Marketing Model Using Electronic Newsletters." With Anca Micu. Presented to the International Symposium on Online Journalism, University of Texas at Austin April 16, 2004.

"An Economic Model of Permission Marketing: Win-Win-Win Relationship Building Among Marketers, ISP, and Internet Users." With Anca Micu, Jin Yan and Glen Cameron. Presented to the American Marketing Association 2004 Educators Conference, Scottsdale, AZ, Feb 9-13, 2004.

"Are There Early Adopters of Unsolicited E-Mails? With Anca Micu. Presented to Expanding Convergence: Media Use in a Changing Information Environment, University of South Carolina, Aug. 12, 2003.

Are There Early Adopters of Unsolicited E-Mails? With Anca Micu. Presented to the International Conference on Politics and Information Systems: Technologies and Applications (PISTA), Orlando, FL July 26, 2003

News and the Net (Review): Journalism and Mass Communications Quarterly, 80:3 (2003): 7:52-53.

"No Newspaper is No Fun: Failed delivery, Berelson revisited and what missing the newspaper means." Newspaper Research Journal 22:4, Feb. 2002.

"The E-Mail is Down: Using a 1940s method to analyze a 21<sup>st</sup> century problem." With Brooke Fisher. Presented to the Communications Technology and Policy Division at the AEJMC Annual Conference, Miami, Aug.7, 2002.

"Use of online news sites: Development of habit and automatic procedural processing" With Maria E. Len-Rios. Presented to the Theory and Methodology Division at the AEJMC Annual Conference, Washington, D.C., August 2001.

"By the Numbers: Documenting the Newspaper Habit." Paper presented to the Communications Theory and Methodology Division at the AEJMC Annual Conference, Phoenix, Aug. 9, 2000.

"The Daily Habit: Ritual Behaviors and Their Effects on Newspaper Research." Paper presented to the American Association for Public Opinion Research for presentation at its 55<sup>th</sup> annual conference in Portland, Oregon May 18-21

"In the Public's Interest, or Interesting to the Public? Who Defines 'News?'," Paper presented to the Communications Theory and Methodology Division for presentation at the AEJMC Annual Conference, New Orleans, Aug. 6, 1999.

"Who is My Paper, Anyway?: Personality Profiling to Assess Newspaper Brand Identity", Presented to the Huck Boyd National Center for Community Newspapers for the Community Media Newspapers and Community-Building Seminar held in conjunction with the National Newspaper Association's 114th Annual Convention in Boston, Sept. 30 and Oct. 1, 1999.

"The Ad Rep as Business Coach: Account Planning for Community Newspapers." Presented to the Huck Boyd National Center for Community Media Newspapers and Community-Building Seminar Sept. 24-25, 1998, in Reno, Nev., in conjunction with the National Newspaper Association's 113th Annual Convention.

"News for the Newsroom: A Study of Employee Communications Practices Used by Newspaper Editors," by Andi Stein, Clyde Bentley, and Wayne Wanta. Presented to the Public Relations/Corporate Communications Track of the Eleventh Annual Meeting of the International Academy of Business Disciplines, March 25-28, 1999, Chicago, and published in conference proceedings.

"50 Years Later: 'What It Means to Miss the Newspaper.'" Paper presented to the AEJMC Annual Conference, Baltimore, MD, Aug. 5, 1998

"Life Style and the Daily News: A Comparison of Newspaper Non-Readers, Infrequent Readers and Frequent Readers." Master's thesis at the University of Texas, 1990

### **General Publications**

Guest host, "Mediashift," PBS blog (<http://www.pbs.org/mediashift> ). November 2007.

"Forget the backpack, 'pocket journalism' is coming." Online Journalism Review, Dec. 20, 2006 ([http://www.ojr.org/ojr/stories/061216\\_Bentley/](http://www.ojr.org/ojr/stories/061216_Bentley/) )

"The NNA Community Newspaper Management Handbook" Online book published in cooperation with the Newspaper Association of America. 2006.  
<http://citizenjournalism.missouri.edu/webnnaversions/indexfiles/indexnna.html>

"Citizen Journalism at the Missouri School of Journalism" Research Web site.  
<http://citizenjournalism.missouri.edu/>

Putting ink in their blood: Real-world project persuades students to take a fresh look a community newspapers as a career choice." Publishers' Auxiliary, Sept. 18, 2000.  
Presented at the Newspapers & Community-Building Symposium VII, part of the 115th Annual National Newspaper Association Convention, Louisville, KY.

"What It Means to Miss the Newspaper." Cover story for Ideas magazine, the journal of the International Newspaper Marketing Association. September 1998.

"Building Media Brands" Selected for annual "Brand Champions of the Future" edition of The Advertiser magazine, journal of the Association of National Advertisers. October 1998

"Newsroom Awards: Cost is not the point – the style is in the delivery," with John Russial in Presstime, the magazine of the Newspaper Association of America, April 1996.

"The ABCs of Branding for Newspapers." National training video filmed by Newstar Communications, Oct. 9, 1998.

"Call Me Coach: Account Planning for Newspapers." National training video filmed by Newstar Communications, Oct. 9, 1998.

## **Seminars, Presentations and Conferences**

### **Great Ideas for Teachers**

Jury-selected presenter for the AEJMC annual convention

2007 "A sweet way to teach innovation: Banana Split 2.0"

2002 -- "A fairy tale approach to writing for the Web: How to use a well-known children's story to demonstrate how Web writing differs from print media writing")

### **AEJMC 2007**

Panel presenter: "The Missouri experience" for Citizen Journalism: Global initiatives, local reverberations--creating a convergent global village.

Panel presenter: "Pocket journalism: Walking around with your office" for Teaching and working in a multimedia world workshop.

### **Readers' Revolution: Journalism.co.uk**

Presenter: Opening the door: Making citizen journalism work

London, UK, Dec. 4, 2006

### **Suburban Newspapers of America**

National teleconference presentation: "Is the boom in user-generated content a boon or a threat to suburban newspapers?" June 28, 2007

Presentation: Small steps or huge leaps... What are you planning for your local website in the future?

Las Vegas, NV, May 18, 2006

### **Connections: Newspaper Association of America**

Presenter: Growing the audience with citizen journalism

Orlando FL Feb. 20-21, 2006

Panelist, Dallas, TX 18-19, 2005

### **Web+10**

Poynter Institute, St. Petersburg, FL. Jan. 31-Feb. 2, 2005

### **The Digital Revolution:**

#### **The Impact of Digital Media and Information Technologies**

Newsplex, Columbia, South Carolina, October 14-16, 2004

### **International Symposium on Online Journalism**

University of Texas at Austin, TX.

Presenter, April 6-8, 2006

Presenter April 16-17, 2004

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**New Media Conference, 2002, 2001 and 2000**

Annual conference co-sponsored by UC Berkeley and USC.

**Defining Convergence Conference, IFRA**

University of South Carolina, Columbia, SC. Nov. 12-13, 2002

**The Dynamics of Convergent Media**

University of South Carolina, Columbia, SC. Nov. 14-16, 2002

**American Copy Editors Society (ACES)**

National convention in Portland, OR, September 11-12, 1998.

**American Press Institute**

Cost and Revenue Management seminar, 1995.

Studied methods of increasing revenue and controlling costs at all levels of newspaper management. Learned to use the Inland Daily Press Association Cost and Revenue Study.

**Tom Hopkins International**

Professional Selling A to Z, 1991.

Completed sales and sales management courses.

**The Poynter Institute for Media Studies**

Media Management and Entrepreneurship Program, 1989.

Studied market analysis, strategic planning, leadership skills, communication and motivation, problem solving, coaching and staff development. The 10-week program also covered financial analysis, media economics, ethics, labor issues, and newspaper design.

**Society of Newspaper Design**

National convention, 1988.

Participated in publication redesign and new technology seminars.

**Arnold DeLucca & Associates**

Advertising sales seminar, 1981.

Reviewed tactics for account management.

**National Newspaper Foundation**

Small Newspaper Management Institute, 1979.

Learned strategies for motivation, budgeting and production at a weeklong academy.

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## **International**

### **Missouri Global Scholars**

Mongolia: Empire and Democracy Study Seminar  
Ulaanbaatar, Mongolia  
June 1-15 (scheduled)

### **Missouri London Program**

Professor and internship supervisor  
London, UK  
August – December 2006

### **OhmyNews International Citizen Reporters' Forum**

Invited presenter  
Seoul, Korea  
June 22-26, 2005

### **Visiting instructor, Media Management**

Guangzhou Daily  
Guangzhou, China  
July 16-28, 2005

### **International Symposium on Online Journalism**

University of Texas at Austin, TX. April 16-17, 2004

### **Visiting Professor, Online Journalism**

European Journalism Academy, Vienna, Austria, Nov. 3-4, 2003

### **Beyond the Printed Word Conference**

Ifra, Rome, Italy, Oct. 30-31, 2003

### **Online Journalism for Editors. Mongolia Press Institute**

Ulaanbaatar, Mongolia, April 4-April 13 2002.

## **Service activities**

### **National Newspaper Association**

### **Columbia Kiwanis Club**

Member, 2006-2006

### **University of Missouri Facebook Taskforce**

Member, 2005-2006  
Presenter, all-university seminar, March 8, 2006

### **Columbia Independent School**

Invited speaker, Marc 16, 2006

Bentley: News Embargoes

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**Missouri School of Journalism Policy Committee**

Member, 2003-2005

**Missouri School of Journalism Technology Committee**

Member, 2003-2004

**Center for the Digital Globe**

Executive Board, 2004-6. Certification committee, 2002-2003

**Newspaper Division, Association for Education in Journalism and Mass Communications**

Head, 2002 – 2003. Program chair, 2001-2002.

**Search Committee, Advertising Department Faculty**

Chair. University of Missouri, 2002.

**Research and Development Committee**

Member. University of Missouri, 2002-2003.

**Search Committee, Daily Missourian General Manager**

Chair. University of Missouri, October-December 2001.

**Kiwanis International**

Columbia, MO. Club 2006 - .Tillamook, Ore., Club 1980-81. Idaho Panhandle Club, 1986-88.

**Oregon Daily Emerald Board of Directors**

University of Oregon, two-year appointment October 2000.

**Minority Journalist Workshop**

Helped coordinate a workshop for minority high school journalists, matching students with professionals

June 1998

**Kappa Tau Alpha**

Member, national journalism honor society

1998 to present

**Toastmasters International**

Competent Toastmaster certification, 1993.

**Pendleton Chamber of Commerce**

Board of directors, 1994-1995

**Research emphasis**

As an experienced journalist and newspaper manager, I have a long-held fascination with the interface between the media organization and the various audiences it attempts to serve. A research focus on the audience is natural for me. My master's thesis explored the lifestyle differences of frequent readers, infrequent readers and non-readers. I have since also studied media systems dependency theory and audience satisfaction, and I have extensively studied the impact of brand equity on newspapers.

My major research attempts to differentiate between reader "preference" and reader "desire," the goal of defining and quantifying the factors that lead to reader loyalty. My current research works in the online journalism field, specifically the role of "citizen journalism." I founded a citizen journalism publication and continue to conduct research on the phenomenon.

I have explored the non-content factors that drive people to read newspapers, despite the availability of similar information in cheaper and often faster electronic forms. My dissertation looked at the "ritual" or habitual aspect of newspaper readership, using a combination of quantitative survey methodology and qualitative interviews..

## **Exhibit B**

### **Stipulation and Agreement (March 21, 2008)**

UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF MASSACHUSETTS  
(Boston Division)

UNITED STATES SECURITIES AND  
EXCHANGE COMMISSION,

Plaintiff,

v.

STEVEN E. NOTHERN,

Defendant.

Civil Action No. 05-10983 (NMG)

**STIPULATION AND AGREEMENT**

The parties to the above-entitled action hereby stipulate and agree as follows:

1. Attached as Exhibit A is an e-mail exchange from October 31, 2001 produced by the U.S. Department of the Treasury ("Treasury") and labeled FOIAKBC 651. The parties stipulate to the authenticity of document labeled FOIAKBC 651. The parties agree to waive their right to object under Federal Rules of Evidence 602 and 802 to certain statements contained in document labeled FOIAKBC 651, insofar as the parties seek to introduce the statements for the following limited purposes:

- a. The parties may seek to introduce the statement "The refunding process has been criticized for years because of suspected leaks" to prove the existence of criticism of Treasury's quarterly refunding process because of suspected leaks, but not to prove that leaks occurred.
- b. The parties may seek to introduce the statement "There was a leak a few weeks ago at the emergency re-opening" and Timothy Bitsberger's response "Yes" to Tony Fratto's question "There was a leak during the emergency reopening?" to prove that a leak occurred in connection with Treasury's intermediate issuance of

10-year notes on October 4, 2001.

- c. The parties may seek to introduce the statement "Attributed to the borrowing committee" to prove that if a leak occurred in connection with Treasury's intermediate issuance of 10-year notes on October 4, 2001, it was "attributed" to the Treasury Borrowing Advisory Committee, but not to prove that the Treasury Borrowing Advisory Committee was responsible for the leak.

The parties reserve their right to object to the admission of document labeled FOIAKBC 651 and the statements contained in that document on all grounds other than those set forth under Federal Rules of Evidence 602 and 802, including, but not limited to, relevance and prejudice. The parties also reserve their right to object to the admission of any deposition testimony relating to document labeled FOIAKBC 651 on any grounds. The parties agree not to seek the deposition of Timothy Bitsberger in this action unless there is hereafter additional production of documents by Treasury or the parties that contain any information not previously disclosed relating to Mr. Bitsberger.

2. Attached as Exhibit B is a portion of an e-mail exchange dated November 15, 2001 produced by Treasury and labeled FOIAKBC 630. The parties stipulate to the authenticity of document labeled FOIAKBC 630. The parties agree to waive their right to object under Federal Rule of Evidence 802 to the admission of the following statements in document labeled FOIAKBC 630:

**I was asked if this was the first time that someone got into a Treasury press conference. I replied, "I can't say for certain, but I think it's likely that others in the past have found their way into these things."**

**Not particularly articulate. I meant that I think it's very likely that others have gotten into these things in the past. I think it unlikely that others have not gotten into these things in the past.**

**I meant that long before the highly professional and competent Bush**

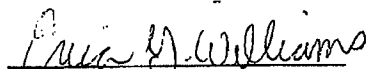
**Administration Treasury appointees arrived on the scene, this place leaked like a sieve; and that we wouldn't be talking if our predecessors hadn't been letting jokers like Pete Davis into refunding announcements for the past eight years.**

The parties reserve their right to raise a hearsay objection to any other statements made in document labeled FOIAKBC 630. The parties also reserve their right to object to the admission of document labeled FOIAKBC 630 and all statements contained in that document on all grounds other than those set forth under Federal Rule of Evidence 802, including, but not limited to, relevance and prejudice. Additionally, the parties agree not to seek to re-open the deposition of Tony Fratto unless there is hereafter additional production of documents by Treasury or the parties that contain any information not previously disclosed relating to Mr. Fratto.

3. This Stipulation and Agreement does not apply to any other documents or testimony in the case.

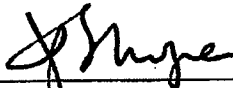
Respectfully submitted,

FOR THE PLAINTIFF:



Erica Y. Williams  
Sarah L. Levine  
John J. Rossetti, Jr.  
U.S. Securities and Exchange Commission  
100 F Street, N.E.  
Washington, D.C. 20549-4010  
Phone: (202) 551-4450  
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williamse@sec.gov

FOR THE DEFENDANT:



Nicholas C. Theodorou (BBO # 495730)  
John A. Shope (BBO # 562056)  
Robert E. Toone (BBO # 663249)  
FOLEY HOAG LLP  
155 Seaport Boulevard  
Boston, MA 02210  
Phone: (617) 832-1000  
Fax: (617) 832-7000  
jshope@foleyhoag.com

Dated: March 21, 2008

## **EXHIBIT A**

**Alvarado, Carmen**

**From:** Bitsberger, Timothy  
**Sent:** Wednesday, October 31, 2001 3:54 PM  
**To:** Fratto, Tony  
**Subject:** RE: Proposed statement re pre embargo release of Q4 refunding

Yes. Attributed to the borrowing committee.

-----Original Message-----

**From:** Fratto, Tony  
**Sent:** Wednesday, October 31, 2001 3:52 PM  
**To:** Bitsberger, Timothy; Davis, Michele; Malvey, Paul  
**Cc:** Roseboro, Brian; Gross, Jared; Holahan, Betsy; Huther, Jeff  
**Subject:** RE: Proposed statement re pre embargo release of Q4 refunding

There was a leak during emergency reopening?

-----Original Message-----

**From:** Bitsberger, Timothy  
**Sent:** Wednesday, October 31, 2001 3:19 PM  
**To:** Aufhauser, David; Fratto, Tony; Davis, Michele; Malvey, Paul; Fisher, Peter; Adams, Tim  
**Cc:** Roseboro, Brian; Gross, Jared; Nichols, Robert; Holahan, Betsy; Huther, Jeff  
**Subject:** RE: Proposed statement re pre embargo release of Q4 refunding

[REDACTED]

(b)(5)

3. There was a leak a few weeks ago at the emergency re-opening. The refunding process has been criticized for years because of suspected leaks.

[REDACTED]

-----Original Message-----

**From:** Aufhauser, David  
**Sent:** Wednesday, October 31, 2001 2:47 PM  
**To:** Fratto, Tony; Davis, Michele; Malvey, Paul; Fisher, Peter; Adams, Tim  
**Cc:** Roseboro, Brian; Gross, Jared; Nichols, Robert; Bitsberger, Timothy; Holahan, Betsy; Huther, Jeff  
**Subject:** RE: Proposed statement re pre embargo release of Q4 refunding

[REDACTED]

(b)(5)

-----Original Message-----

**From:** Fratto, Tony  
**Sent:** Wednesday, October 31, 2001 2:37 PM  
**To:** Aufhauser, David; Davis, Michele; Malvey, Paul; Fisher, Peter; Adams, Tim  
**Cc:** Roseboro, Brian; Gross, Jared; Nichols, Robert; Bitsberger, Timothy; Holahan, Betsy; Huther, Jeff  
**Subject:** RE: Proposed statement re pre embargo release of Q4 refunding  
**Importance:** High

## **EXHIBIT B**

**Alvarado, Carmen**

From: Hills, Megan  
 Sent: Thursday, November 15, 2001 6:34 PM  
 To: Fratto, Tony  
 Subject: RE: Documents for SEC Inquiry

Thank you. Attached is my reply (let me know if you want any changes, I will be faxing it later tonight). Megan

 secletter.mpd (6 KB)

-----Original Message-----

From: Fratto, Tony  
 Sent: Thursday, November 15, 2001 6:10 PM  
 To: Hills, Megan  
 Subject: RE: Documents for SEC Inquiry

Wrong paper -- Wall Street Journal - see below

I was asked if this was the first time that someone got into a Treasury press conference. I replied: "I can't say for certain, but I think it's likely that others in the past have found their way into these things."

Not particularly articulate. I meant that I think it's very likely that others have gotten into these things in the past. I think it unlikely that others have not gotten into these things in the past.

I meant that long before the highly professional and competent Bush Administration Treasury apparatus arrived on the scene, this place leaked like a sieve, and that we wouldn't be talking if our predecessors hadn't been letting jokers like Pete Davis into refunding announcements for the past eight years.

Credit Markets:

In Wake of Criticism, Treasury Plans Regulations Aimed at Stopping Leaks of Market-Moving News

By Gregory Zuckerman

Staff Reporter of The Wall Street Journal

The Wall Street Journal via Dow Jones

The Treasury Department, facing criticism after an industry consultant attended a press-only briefing last month and leaked market-moving news, yesterday outlined new rules to try to keep its news under wraps.

The changes, which some bond traders said were overdue, will bring the Treasury more in line with the way other government agencies, including the Federal Reserve and the Labor Department, release market-sensitive news.

In announcing the changes, Treasury officials acknowledged the recent leak probably wasn't the first time that someone from outside the press corps found their way into a Treasury press briefing, raising the possibility that bond traders have been receiving early word on market-moving news from Treasury for years.

"It's likely that others in the past" have participated in press briefings though they weren't members of the press, said Tony Fratto, a spokesman for the Treasury Department.

Some of the changes are quite elementary. Now, for instance, instead of releasing information to the press an hour or so before it is publicly

## **Exhibit C**

**Cited Excerpts from the Deposition of Peter Fisher  
(August 8, 2006)**

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UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF MASSACHUSETTS

UNITED STATES SECURITIES )

AND EXCHANGE COMMISSION, )

Plaintiff, )

vs. ) No. 05-10983  
(NMG)

STEVEN E. NOTHERN, )

Defendant. )

-----)

VIDEOTAPED  
DEPOSITION OF PETER R. FISHER  
New York, New York  
August 8, 2006

Reported by:  
PAMELA J. MAZZELLA, RPR  
JOB NO. 7046

1 Fisher  
 2 back to work, it's the beginning of  
 3 September, and so suddenly you have got back  
 4 to work and the big issue is do we get rid of  
 5 the long bond?  
 6 MS. WILLIAMS: Objection.  
 7 A. No, the big issue was 9/11.  
 8 Q. All right. And 9/11, you're  
 9 talking about the terrorist attacks on  
 10 September 11, 2001?  
 11 A. Yes.  
 12 Q. And you had work to do in  
 13 connection with that, correct?  
 14 A. Yes, I did.  
 15 Q. And what work did you have to do?  
 16 A. After, on September 12 I came to  
 17 New York with SEC Commissioner Harvey Pitt to  
 18 try and work on re-opening the markets.  
 19 Q. And from a domestic finance point  
 20 of view did you take any action to try to  
 21 mitigate the effects of the terrorist attacks  
 22 of September 11, 2001?  
 23 A. Yes.  
 24 Q. What was that?  
 25 A. We, on September 11 we worked with

1 Fisher  
 2 the Bond Market Association and other market  
 3 participants to effectively give the approval  
 4 of the president's working group on financial  
 5 markets, for the U.S. Treasury market to be  
 6 closed on September 12, among other things,  
 7 because that was the first initiative to  
 8 confirm that the markets would not trade on  
 9 September 12, and then we began to work on  
 10 when and how, with both equity and fixed  
 11 income markets, it would be reopened.  
 12 Q. So with regard to discussions about  
 13 eliminating a long bond, is it your testimony  
 14 that you didn't discuss that subject with  
 15 your colleagues at Treasury in between your  
 16 confirmation in the early part of August and  
 17 September 11?  
 18 A. I have no recollection of doing so.  
 19 I was on a train going back to New Jersey to  
 20 be with my family at the time, and my Senate  
 21 confirmation, and then spent the next two  
 22 weeks moving my family and having a little  
 23 vacation, so I don't have any recollection at  
 24 all of discussing it with staff during the  
 25 month of August. If it came up prior to

1 Fisher  
 2 9/11, it was again just one of a number of  
 3 topics in the laundry list of things to do  
 4 managing the nation's debt.  
 5 Q. Do you remember whether you were  
 6 back from vacation on September 11, 2001?  
 7 A. I was in my office on that day,  
 8 yes.  
 9 Q. Had you already been back for a few  
 10 days?  
 11 A. A couple -- a few days. I don't  
 12 recall exactly how many.  
 13 Q. Now, with regard to the attacks of  
 14 September 11, 2001, do you recall being  
 15 concerned that trading in Treasury bond was  
 16 experiencing a phenomena of an increased  
 17 failure in settlement so that, in other  
 18 words, when people would make a deal to trade  
 19 the bonds and then a couple of days later  
 20 they went to actually exchange the paperwork  
 21 that would be necessary to complete the  
 22 transaction, that people were not able to do  
 23 that?  
 24 MS. WILLIAMS: Objection.  
 25 A. That was not an issue on September

1 Fisher  
 2 11 itself. It was self-evident that there  
 3 would be a number of -- there would be great  
 4 difficulties in reconciling trading from  
 5 September 11 given the disruption took place  
 6 during the trading day, the attack.  
 7 The issue I think you're referring  
 8 to really came up in subsequent weeks as  
 9 there were the failures that took place as a  
 10 result of the terrorist attacks to Federal  
 11 Government securities began to accumulate,  
 12 and that really took place over subsequent  
 13 weeks.  
 14 Q. And these were the reports of  
 15 so-called fails?  
 16 A. Yes.  
 17 Q. Failed trades?  
 18 A. Yes.  
 19 Q. And did you take any action to try  
 20 to address the issue of failed trades?  
 21 A. Several weeks later we chose to  
 22 have a, what is called a snap auction of  
 23 5-year notes to try to provide an additional  
 24 supply to reduce the bottleneck of the  
 25 shortage of 5-year notes that we experienced

14 (Pages 50 to 53)

|   |  |
|---|--|
| <p style="text-align: right;">Page 54</p> <p>1 Fisher</p> <p>2 in the market.</p> <p>3 Q. When you say a "snap auction,"</p> <p>4 meaning it was not something that had been</p> <p>5 regularly scheduled?</p> <p>6 A. That is correct.</p> <p>7 Q. It came up on very short notice?</p> <p>8 A. Yes.</p> <p>9 Q. And do you recall re-opening the</p> <p>10 10-year note?</p> <p>11 A. I don't believe -- I may have it</p> <p>12 backwards. I know the question of the</p> <p>13 10-year or the 5-year note, I know we, I</p> <p>14 recall now we have reopened one of them. I'm</p> <p>15 not recalling right now which one it was. I</p> <p>16 thought it was the 5-year note. Maybe in</p> <p>17 your notes it tells you it's the 10-year</p> <p>18 note.</p> <p>19 Q. So if there are new accounts that</p> <p>20 say you opened the 10-year note, you believe</p> <p>21 that is reliable?</p> <p>22 A. Then I'm inclined to believe that</p> <p>23 that's what we did rather than reopen the</p> <p>24 files.</p> <p>25 Q. Then did you consult with the</p>                                     | <p style="text-align: right;">Page 56</p> <p>1 Fisher</p> <p>2 Q. And so when this telephone</p> <p>3 conference occurred, people were still at</p> <p>4 their offices.</p> <p>5 Is that fair to say?</p> <p>6 MS. WILLIAMS: Objection.</p> <p>7 A. I don't recall whether they were at</p> <p>8 their offices or somewhere else.</p> <p>9 Q. When the Borrowing Advisory</p> <p>10 Committee meets ordinarily for the, in</p> <p>11 connection with the Quarterly Refunding</p> <p>12 Conference, the members actually travel to</p> <p>13 Washington, correct?</p> <p>14 A. That's correct.</p> <p>15 Q. And then they meet privately,</p> <p>16 correct?</p> <p>17 A. Yes.</p> <p>18 Q. Is there any restriction on their</p> <p>19 communication with their offices during the</p> <p>20 periods of their meetings?</p> <p>21 A. Yes, there is.</p> <p>22 Q. How is that set forth?</p> <p>23 A. Some of it I believe is set forth</p> <p>24 in statute and some in Treasury rule, my</p> <p>25 recollection. It specifies that during the</p>   |
| <p style="text-align: right;">Page 55</p> <p>1 Fisher</p> <p>2 Borrowing Advisory Committee members in</p> <p>3 advance of making a decision to reopen the</p> <p>4 10-year note?</p> <p>5 A. We did have a telephone call with</p> <p>6 them prior to announcing the decision to</p> <p>7 reopen the 10-year note, yes.</p> <p>8 Q. And what was the purpose of that</p> <p>9 conference call?</p> <p>10 A. To elicit their advice about</p> <p>11 whether that would be, whether it was likely</p> <p>12 to be effective in reducing the backlog of</p> <p>13 fails.</p> <p>14 Q. And what did people say?</p> <p>15 A. There was a range of opinion, as is</p> <p>16 often the case with Borrowing Advisory</p> <p>17 Committee.</p> <p>18 Q. How often -- I'm sorry, how far in</p> <p>19 advance of your announcement of the snap</p> <p>20 auction was that meeting with the Borrowing</p> <p>21 Advisory, the telephone conference with the</p> <p>22 Borrowing Advisory Committee about re-opening</p> <p>23 the 10-year note?</p> <p>24 A. It would have been measured in</p> <p>25 hours.</p> | <p style="text-align: right;">Page 57</p> <p>1 Fisher</p> <p>2 period of the meeting, that until the</p> <p>3 announcement of the Treasury action they are</p> <p>4 prescribed from trading or communicating with</p> <p>5 other members of their firms.</p> <p>6 Q. So these are written rules that you</p> <p>7 have reviewed at some point?</p> <p>8 A. I may have reviewed them, I don't</p> <p>9 recall now, but I was certainly aware of</p> <p>10 them.</p> <p>11 Q. Are you aware of a rule that</p> <p>12 prescribes their going back to their offices</p> <p>13 for a set period?</p> <p>14 A. Yes.</p> <p>15 Q. So obviously when you arranged the</p> <p>16 telephone conference call, that rule couldn't</p> <p>17 be in effect?</p> <p>18 A. That's correct.</p> <p>19 Q. And do you recall hearing</p> <p>20 complaints that people who were members of</p> <p>21 the Borrowing Advisory Committee had known in</p> <p>22 advance about the snap auction or the</p> <p>23 re-opening of the 10-year bond, and that they</p> <p>24 had derived a financial advantage from that</p> <p>25 advanced knowledge?</p> |

15 (Pages 54 to 57)

1 Fisher  
 2 A. I had not -- the latter part of  
 3 your statement, I have not heard that, that  
 4 anyone traded on or had some financial  
 5 advantages as a consequence.  
 6 There were complaints expressed  
 7 about the advance knowledge. Yes, I was  
 8 aware of complaints about that by some  
 9 parties, I don't recall who, but it came up,  
 10 yes.  
 11 Q. This is in connection with the snap  
 12 auction?  
 13 A. Yes.  
 14 Q. Well, why would anyone complain  
 15 about advance knowledge by the Borrowing  
 16 Advisory Committee if no one traded on it to  
 17 financial advantage?  
 18 MS. WILLIAMS: Objection.  
 19 A. I don't know what -- they can  
 20 complain for any reasons. You're asking me  
 21 to get inside their heads.  
 22 Q. Actually, what I'm trying to get  
 23 at, and I apologize since I asked it perhaps  
 24 inartfully, is I'm trying to get what more,  
 25 as best you can recall what the gist of the

1 Fisher  
 2 complaint was.  
 3 In other words, you said you did  
 4 hear a complaint that members of the  
 5 Borrowing Advisory Committee knew in advance  
 6 about the snap auction re-opening the 10-year  
 7 note, correct?  
 8 A. I recall.  
 9 Q. Who made that complaint?  
 10 A. I don't recall who. I recall it  
 11 being such concerns were identified. Staff  
 12 may have informed me.  
 13 Q. Other than people being upset about  
 14 the fact that somebody else knew in advance,  
 15 there was no other meat on the bone as far as  
 16 why that was considered to be a bad thing?  
 17 MS. WILLIAMS: Objection.  
 18 A. I have no recollection of specific  
 19 allegations that any member of the Borrowing  
 20 Committee in fact traded on the information.  
 21 And on the telephone call we made clear to  
 22 them, I do recall, that they were going to be  
 23 prescribed from trading until we were able to  
 24 make the announcement.  
 25 Q. You said you weren't aware of any

1 Fisher  
 2 specific allegations.  
 3 Were you aware of any general  
 4 allegations or insinuations along that line?  
 5 A. The complaints actually included an  
 6 insinuation, but I was not aware of any  
 7 accusation that members of the Borrowing  
 8 Committee actually traded on the information.  
 9 I have no recollection of that.  
 10 Q. So now this complaint that you  
 11 heard, was that shortly after the decision  
 12 you had taken to, or shortly after the  
 13 announcement of the snap auction?  
 14 A. I have no recollection whether it  
 15 was immediate or in subsequent days.  
 16 Q. But now those people didn't wait a  
 17 month to make this complaint, right?  
 18 MS. WILLIAMS: Objection.  
 19 A. Presumably not.  
 20 MR. SHOPE: In fact, why don't we  
 21 mark this as the next exhibit.  
 22 (Fisher Exhibit 3, two-page  
 23 article, marked for identification, as  
 24 of this date.)  
 25 MR. ROSSETTI: While you're

1 Fisher  
 2 marking the exhibit, can we take a one-minute  
 3 break here, please?  
 4 MR. SHOPE: Sure.  
 5 THE VIDEOGRAPHER: The time is  
 6 11:02 and we're going off the record.  
 7 (Recess taken.)  
 8 THE VIDEOGRAPHER: The time is  
 9 11:06 a.m. and we're back on the record.  
 10 BY MR. SHOPE:  
 11 Q. First of all, we just were off the  
 12 record and took a short break, Mr. Fisher,  
 13 and you had a chance to consult with Mr.  
 14 Vance.  
 15 Do you have any changes or  
 16 amendments or clarifications of any of your  
 17 testimony at this point?  
 18 A. No.  
 19 Q. You have in front of you what has  
 20 been marked as Exhibit 3, which is an article  
 21 from an outfit called AFX News, Limited.  
 22 Do you know that organization?  
 23 A. No, I don't.  
 24 Q. But you see this article here about  
 25 the re-opening of the 10-year note in

Page 66

1 Fisher

2 Q. Isn't there also a concern that if

3 the market perceives that there are insiders

4 who have advance information of what Treasury

5 is going to do, that there are going to be

6 fewer people who are going to be willing to

7 participate in that market?

8 A. I think that's what I just said.

9 Q. And as a consequence, if there are

10 fewer people who are willing to participate

11 in a market, the Treasury may actually have

12 to pay a higher yield on the notes that it

13 issues in order to finance the federal debt.

14 Is that fair?

15 MS. WILLIAMS: Objection.

16 A. I think that's a little simplistic,

17 but that would be the gist.

18 Q. So honesty isn't just the best

19 policy, it's also perhaps the most

20 cost-effective policy for the Treasury.

21 Would that be a fair statement?

22 MS. WILLIAMS: Objection.

23 A. I think it's really a matter of

24 transparency. I don't think anyone's

25 suggesting that the Treasury is being

Page 67

1 Fisher

2 dishonest, but transparency and clarity is

3 highly to be desired in conducting the

4 Treasury's financial affairs.

5 Q. Now, we we talked about the

6 decision-making, you had been back at the

7 office for a few days from your vacation,

8 September 11 had happened, obviously that was

9 a distraction.

10 What's your best recollection of

11 when you began to discuss, again this isn't

12 the post-confirmation world, the possibility

13 of eliminating the long bond?

14 A. I don't have a specific

15 recollection of when that would happen. Most

16 likely not until October, although it might

17 have come up in staff conversations prior to

18 that.

19 Q. And when you say "staff

20 conversations," whose staff are we talking

21 about?

22 A. My staff at the Treasury working at

23 the Office of Domestic Finance. You have

24 heard of Mr. Malvey and members of his staff

25 and other Treasury officials.

Page 68

1 Fisher

2 Q. Now, would the political appointees

3 have periodic meetings amongst themselves?

4 A. Certainly, yes.

5 Q. In other words, would it be, for

6 example, a weekly breakfast meeting with

7 Secretary O'Neill and some of the other

8 political appointees?

9 A. Yes.

10 Q. So you would discuss the

11 possibility of eliminating the long bond in

12 those meetings?

13 A. I don't recall doing so, certainly

14 not in the month of September.

15 Q. What about in October?

16 A. It's possible, but I don't have any

17 specific recollection.

18 Q. Just generally speaking, wasn't one

19 of the purposes of those meetings to discuss

20 significant policy initiatives that were

21 being considered?

22 A. Yes.

23 Q. And elimination of the long bond

24 was significantly important that it might

25 have merited mention at one of these

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1 Fisher

2 meetings, correct?

3 A. Yes, could have, but I don't have a

4 specific recollection of doing so.

5 Q. Bearing in mind that you don't have

6 a specific recollection, given the importance

7 of the matter, would you say it is more

8 likely than not that it was discussed at one

9 of the weekly breakfast meetings with

10 Secretary O'Neill and one of the other

11 political appointees?

12 MS. WILLIAMS: Objection.

13 A. No, I think I would disagree with

14 that. It's possible that I brought it up at

15 perhaps whatever the ultimate such breakfast

16 was before an announcement was made.

17 It also seems to be very likely

18 that it was never brought up in that large

19 forum. Sensitive topics might not be brought

20 up even in that meeting of senior political

21 appointees.

22 Q. So in September you might have

23 discussed it with Mr. Malvey and his

24 subordinates, correct?

25 MS. WILLIAMS: Objection.

18 (Pages 66 to 69)

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1 Fisher  
 2 A. Yes, it's possible.  
 3 Q. Who else might you have discussed  
 4 it with in September?  
 5 A. I don't have any recollection of  
 6 doing so. I don't have any specific  
 7 recollection of discussing it with anyone in  
 8 September. I'm allowing the possibility that  
 9 it may have been discussed with Mr. Malvey  
 10 and members of his staff.  
 11 Q. And what about Secretary O'Neill in  
 12 September?  
 13 A. I don't have a specific  
 14 recollection. I think that the premise of  
 15 your questioning that this was a topic at the  
 16 top of agenda in September is really not  
 17 appropriate. There were a huge numbers of  
 18 issues we were working on.  
 19 I was charged with trying to  
 20 persuade Congress not to enact a Loan  
 21 Guarantee Program for the airlines. And when  
 22 Congress did enact the guarantee loan of the  
 23 airline, I was put on the board of the  
 24 Airline Transportation Stabilization Board  
 25 implementing that process. That's just one

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1 Fisher  
 2 example of a host of initiatives that we were  
 3 working on in the month of September. The  
 4 30-year bond was not at the top of the list.  
 5 Q. Well, I'm trying not to make my  
 6 past questions have premises, I'm just trying  
 7 to get at the truth. So don't worry about  
 8 whether there is a premise or not, just get  
 9 to the factual matter.  
 10 So turning into October, I take it  
 11 you're pretty sure this was discussed in  
 12 October, right?  
 13 A. Yes.  
 14 Q. And so besides Mr. Malvey and his  
 15 staff, who else did you discuss it with?  
 16 A. Certainly Mr. Roseboro.  
 17 Q. Mister?  
 18 A. Roseboro, Brian Roseboro.  
 19 Q. What about, do you know Mr.  
 20 Bitsberger?  
 21 A. Yes, Tim Bitsberger.  
 22 Q. And who is Mr. Bitsberger?  
 23 A. He currently works at Freddie Mac,  
 24 at the time was a Treasury appointee,  
 25 assistant secretary. I'm not quite

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1 Fisher  
 2 remembering his confirmation date. He was  
 3 also a Treasury official at the time.  
 4 Q. And where was he in relation to you  
 5 in the hierarchy of the Treasury?  
 6 A. Under Roseboro and on top of  
 7 Malvey.  
 8 Q. Where was Roseboro in relation to  
 9 you?  
 10 A. Directly under me as assistant  
 11 secretary.  
 12 Q. So Mr. Bitsberger reported to  
 13 somebody who reported to you?  
 14 A. That's correct.  
 15 Q. So did you discuss elimination of  
 16 the 30-year bond with Mr. Bitsberger?  
 17 A. Yes, I think it likely that I did.  
 18 I don't have a specific recollection.  
 19 Q. So let's talk about in the  
 20 beginning of October.  
 21 Who else were you discussing this  
 22 with beside Mrs. Malvey and his staff?  
 23 MR. ROSSETTI: Objection?  
 24 A. In terms of planning for the  
 25 process I think we have identified within the

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1 Fisher  
 2 Treasury Mr. Bitsberger, Mr. Roseboro, Mr.  
 3 Malvey and his staff. The topic may have  
 4 come up with Secretary O'Neill and General  
 5 Counsel Aushauser. I don't have a specific  
 6 recollection.  
 7 Q. You think it may have come up with  
 8 Secretary O'Neill.  
 9 Are you that tentative, or do you  
 10 think it is highly likely that it came up  
 11 with Secretary O'Neill?  
 12 MS. WILLIAMS: Objection.  
 13 A. I recall a specific conversation  
 14 about it prior, it might be in the  
 15 announcement, a single specific conversation.  
 16 I have no other specific recollection.  
 17 Q. When was the single specific  
 18 recollection -- or a conversation? Excuse  
 19 me.  
 20 A. That would have been 10 days, so  
 21 around the 21st, 10 days prior to the  
 22 announcement, somewhere in that window, late  
 23 October. You have been referring to early  
 24 October.  
 25 Q. I'm going to get back to early

19 (Pages 70 to 73)

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1 Fisher

2 October, but since you just mentioned the

3 conversation that you are specifically

4 remembering with Secretary O'Neill, I want to

5 ask you about that.

6 Where were you?

7 A. I believe I was in his office.

8 Q. And the --

9 A. Might have been his dining room, I

10 don't recall.

11 Q. And do you remember what time of

12 day it was, anything like that?

13 A. No. I remember discussing with him

14 and his suggestion that I also -- the main

15 import of that conversation was that he asked

16 that I also discuss the matter with Al

17 Greenspan.

18 Q. And Mr. Greenspan was chairman of

19 the Federal Reserve board at that time,

20 correct?

21 A. Yes.

22 Q. So as we're getting into

23 mid-October, besides the people whom you have

24 identified, was the elimination of the long

25 bond being discussed by anyone in the

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1 Fisher

2 Treasury Department to your knowledge other

3 than persons whom you have identified?

4 MS. WILLIAMS: Objection.

5 A. I have no recollection of any.

6 Q. So at the time that you had the

7 discussion with Secretary O'Neill in which he

8 requested that you discuss the matter with

9 Mr. Greenspan, had you discussed elimination

10 of the long bond with anyone other than the

11 persons whom you have identified?

12 A. Not that I can recall.

13 Q. Okay. Now, do you know whether

14 Secretary O'Neill had discussed elimination

15 of the long bond with anyone other than the

16 persons that we have identified so far?

17 MR. ROSSETTI: Objection.

18 A. I have no basis for speculating on

19 that.

20 Q. So he didn't give you any

21 indication as to whether or not he had spoken

22 to anybody else in the administration at that

23 point?

24 A. I have no basis for having an

25 opinion on that.

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1 Fisher

2 Q. Well, we have a report of the

3 Office of the Inspector General into the

4 events of October 31, 2001.

5 First of all, were you aware that

6 the Inspector General looked into the events

7 surrounding the disclosure of the elimination

8 of the long bond on October 31, 2001?

9 A. Yes.

10 Q. Did you ever read the Inspector

11 General's report?

12 A. No, I don't believe I ever did read

13 it.

14 Q. Did you ever see any kind of a

15 draft or anything like that?

16 A. I don't -- I mean, I have seen

17 copies of it. I certainly have not read it

18 cover to cover and I don't recall reading a

19 draft of it.

20 Q. Even though the distribution for

21 the report lists two people, yourself and Ms.

22 Davis, Michelle Davis, you don't believe you

23 actually ever read through the thing?

24 A. That's correct.

25 Q. Well, we have already marked this

Page 77

1 Fisher

2 as an exhibit so many times, hopefully we can

3 keep the record uncluttered and I'll just

4 read from it. But the --

5 MR. ROSSETTI: Do you have a page,

6 John?

7 MR. SHOPE: Yes, I do.

8 Q. If you go to Exhibit 20, in the

9 Inspector General's report, it's a memorandum

10 of an interview with Brian Roseboro, and on

11 the second page of the memorandum of the

12 interview with Mr. Roseboro it is stated --

13 I'll just read a few sentences to you.

14 "Roseboro said as the assistant secretary for

15 financial markets, he had the authority to

16 make the decision concerning suspending sales

17 of the 30-year bond. In actuality, he said

18 it was a deliberate decision within Treasury

19 involving director of market finance, the

20 undersecretary of domestic finance, and the

21 secretary of staff. He said they received

22 White House concurrence on October 26, 2001."

23 So let's start with the last point.

24 Do you recall there being White House

25 concurrence with the decision to eliminate

20 (Pages 74 to 77)

Page 78

1 Fisher  
 2 the 30-year bond?  
 3 A. Prior to making the announcement I  
 4 consulted with both Larry Lindsey, who was  
 5 the director of the National Economic  
 6 Council, and with Glenn Hubbard, the chairman  
 7 of the Council of Economic Advisors,  
 8 informing them of our intention of  
 9 eliminating the 30-year bond.  
 10 I would not recall a date, but if  
 11 Brian's testimony is there is a specific date  
 12 where White House concurrence was sought,  
 13 that's likely to refer to the same event.  
 14 Q. It's consistent with your memory  
 15 this took place approximately a week before  
 16 the announcement?  
 17 A. Yes.  
 18 Q. And let's take those two  
 19 conversations one by one.  
 20 You said Mr. Hubbard, did I get  
 21 that right?  
 22 A. Yes, Mr. Hubbard.  
 23 Q. So how did that conversation take  
 24 place?  
 25 A. I called him on the telephone.

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1 Fisher  
 2 Q. And what did you say and what did  
 3 he say?  
 4 A. I explained to him of our intention  
 5 of eliminating the 30-year bond and the  
 6 rationale for doing so, and I don't recall  
 7 him saying anything other than generally it  
 8 made sense to him, he understood.  
 9 Q. What was the rationale that you  
 10 explained to him on that day?  
 11 A. Not an efficient form of financing.  
 12 With both Mr. Hubbard and Mr. Lindsey, they  
 13 had a great deal of contact and conversation.  
 14 I don't think it required a lot of ground to  
 15 be covered. I probably highlighted a few of  
 16 the points covered in my statement.  
 17 Q. So at that point you were already  
 18 drafting what your announcement was going to  
 19 be?  
 20 A. I think that's likely. I don't  
 21 have a specific recollection, but that seems  
 22 likely.  
 23 Q. That's what ultimately culminated  
 24 in your prepared remarks which were  
 25 distributed in a press release on October 31?

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1 Fisher  
 2 A. Yes.  
 3 Q. What about Mr. Lindsey, the  
 4 conversation with Mr. Lindsey?  
 5 A. I remember a similar conversation  
 6 with Larry Lindsey and perhaps a little  
 7 briefer than my conversation with Glenn  
 8 Hubbard.  
 9 Q. You may have said it, but just for  
 10 the record what was Mr. Lindsey's commission?  
 11 A. He was the director of the National  
 12 Economic Council.  
 13 Q. And that is something that is part  
 14 of the White House, right?  
 15 A. As is the Council of Economic  
 16 Advisors, both of them would report directly  
 17 to the president.  
 18 Q. And how many members are there of  
 19 those two council, the Council and the  
 20 Committee?  
 21 A. The Council of Economic Advisors  
 22 has I think three members by statute. I  
 23 wouldn't recall the membership of the  
 24 National Economic Council. A number of  
 25 cabinet officers, perhaps eight or nine. I

Page 81

1 Fisher  
 2 don't have a recollection.  
 3 Q. Do you know whether Mr. Lindsey or  
 4 Mr. Hubbard discussed the plan with the other  
 5 members of their respective Committee or  
 6 Council?  
 7 A. I don't know. Neither one of them  
 8 anticipated my conversation with them, so  
 9 from that I did not think this issue was  
 10 being discussed inside the White House prior  
 11 to my raising it with them.  
 12 They both understood the  
 13 sensitivity of the information. I have no  
 14 anticipation that they would share it with  
 15 others, but that was clearly up to them. I  
 16 don't know whether they did or not.  
 17 Q. You didn't ask them not to disclose  
 18 it?  
 19 A. No.  
 20 Q. And so I take it did both of them  
 21 concur in the decision?  
 22 A. I didn't ask for their concurrence.  
 23 I informed them of our intention and I didn't  
 24 ask for approval. That left it open to them  
 25 to object if they wanted to, and no

21 (Pages 78 to 81)

Page 82

1 Fisher  
 2 objections were heard.  
 3 Q. If they had objected, is that  
 4 something that would have caused you to  
 5 change course?  
 6 A. I would have changed my  
 7 conversation with them. I don't think it  
 8 would have changed the fact that it was in  
 9 the Treasury's authority to make these  
 10 decisions.  
 11 Q. But I'm not asking about what was  
 12 the legal authority of people to take action.  
 13 I'm asking about what your policy  
 14 decision-making would have been had the two  
 15 officials of the White House said no, don't  
 16 do it?  
 17 MS. WILLIAMS: Objection.  
 18 A. It obviously would have changed  
 19 matters. I don't want to speculate on how.  
 20 I disagreed with them frequently on all sorts  
 21 of matters, so that would be a rather routine  
 22 process.  
 23 Q. But you were giving them a week's  
 24 notice of this plan that you had so that they  
 25 would have a chance to object and you would

Page 83

1 Fisher  
 2 then have the opportunity to reconsider your  
 3 position in light of their objection.  
 4 Isn't that fair?  
 5 MS. WILLIAMS: Objection.  
 6 A. No, I don't think that's accurate.  
 7 Q. This wasn't just a courtesy, "This  
 8 is what I'm going to do in a week," was it?  
 9 A. It's something in between the two  
 10 versions you have just offered.  
 11 Q. It was important to you that the  
 12 White House concur with this, was it not?  
 13 MS. WILLIAMS: Objection.  
 14 A. No.  
 15 Q. Did Mr. O'Neill tell you to consult  
 16 with the White House about this?  
 17 A. No.  
 18 Q. You had just done this on your own  
 19 initiative?  
 20 A. Yes.  
 21 Q. So at the time that you spoke with  
 22 Secretary O'Neill had you already spoken to  
 23 the White House?  
 24 A. No, I don't believe so.  
 25 Q. And did you follow up on Mr.

Page 84

1 Fisher  
 2 O'Neill's direction to speak with Mr.  
 3 Greenspan?  
 4 A. Yes, I did.  
 5 Q. And when did you have that  
 6 conversation?  
 7 A. I don't recall the date. Some time  
 8 in the latter half of October, so  
 9 contemporaneous with these other  
 10 conversations.  
 11 Q. And what did you say to Mr.  
 12 Greenspan and what did he say to you?  
 13 A. I went over to his office, I  
 14 described the, our intention and our  
 15 rationale. And again I think it's fairly  
 16 standard practice, such conversations, for  
 17 people to understand who has the authority to  
 18 make a decision, whose opinion is being  
 19 sought, and Chairman Greenspan was certainly  
 20 understanding of that. But the import of the  
 21 conversation again was it made sense to him,  
 22 he understood why we were planning on doing  
 23 that.  
 24 Q. In other words, what you're saying,  
 25 it wasn't Chairman Greenspan's decision to

Page 85

1 Fisher  
 2 make?  
 3 A. That's correct, and he would not  
 4 pretend it was.  
 5 Q. But you and Mr. O'Neill were very  
 6 interested in his opinion?  
 7 A. That's correct, yes.  
 8 Q. So if Mr. Greenspan had given his  
 9 opinion this was a lousy idea, that would  
 10 have been an occasion for you to go back and  
 11 reconsider.  
 12 MS. WILLIAMS: Objection.  
 13 Q. Fair statement?  
 14 A. It would have required for a vote  
 15 on our part.  
 16 Q. Now, did you discuss with Mr.  
 17 Greenspan whether or not this decision would  
 18 have any effect on long-term interest rates?  
 19 A. I think it may well have come up,  
 20 but I don't have a specific recollection.  
 21 Q. And did you discuss the question of  
 22 whether or not the elimination of the long  
 23 bond would have an effect on long-term  
 24 interest rates with Mr. Lindsey?  
 25 A. I believe the topic came up with

22 (Pages 82 to 85)

|   |  |
|---|--|
| <p style="text-align: right;">Page 86</p> <p>1 Fisher</p> <p>2 Mr. Lindsey.</p> <p>3 Q. And what did you say on that</p> <p>4 subject and what did he say?</p> <p>5 A. I don't recall what he said. What</p> <p>6 I recall that I said is that since we were</p> <p>7 also planning on eliminating the Buyback</p> <p>8 Program, the impact on long-term interest</p> <p>9 rates was ambiguous. It was very hard to</p> <p>10 predict, once you looked at the net effect of</p> <p>11 the two decisions together, whether long-term</p> <p>12 interest rates would rise or fall on the</p> <p>13 announcement.</p> <p>14 Q. So you had no expectation one way</p> <p>15 or the other?</p> <p>16 A. I expected that markets would</p> <p>17 respond and they would respond with some</p> <p>18 volatility. There was a possibility of</p> <p>19 dramatic movements in prices. But given the</p> <p>20 combined decisions to suspend issuance of</p> <p>21 30-year bonds, but also to suspend the</p> <p>22 Buyback Program, if you work through the math</p> <p>23 of all of that, we were actually going to be</p> <p>24 increasing the supply of long-term Treasury</p> <p>25 bonds over what the market would otherwise</p>   | <p style="text-align: right;">Page 88</p> <p>1 Fisher</p> <p>2 don't recall what Mr. Lindsey said about</p> <p>3 long-term interest rates?</p> <p>4 A. I don't recall him responding to</p> <p>5 that. I do recall him describing the</p> <p>6 ambiguity about how interest rates might</p> <p>7 respond.</p> <p>8 Q. That was something that you just</p> <p>9 raised on your own initiative then?</p> <p>10 A. Yes.</p> <p>11 Q. What about Mr. Hubbard, I take it</p> <p>12 you raised the subject with him about the</p> <p>13 effect on long-term interest rates?</p> <p>14 A. I probably did. I don't have a</p> <p>15 specific recollection. I do recall Mr.</p> <p>16 Lindsey. I don't specifically recall Mr.</p> <p>17 Hubbard, but I likely had the same outline,</p> <p>18 thumbnail conversation.</p> <p>19 Q. Do you recall any response by him</p> <p>20 on that subject?</p> <p>21 A. No, I don't.</p> <p>22 Q. Now, you knew, obviously, this was</p> <p>23 a subject of great interest to the</p> <p>24 administration, correct?</p> <p>25 MR. ROSSETTI: Objection.</p>  |
| <p style="text-align: right;">Page 87</p> <p>1 Fisher</p> <p>2 have been anticipating over the coming year,</p> <p>3 which you would have thought would have led</p> <p>4 to an increase in long-term interest rates as</p> <p>5 more supply was on the market.</p> <p>6 Q. So if there is more supply, the</p> <p>7 price of the long bond goes down, right?</p> <p>8 A. The yield would go up.</p> <p>9 Q. Because the yield is the exact</p> <p>10 converse of the price, or moves conversely I</p> <p>11 should say?</p> <p>12 A. But if the market only focused on</p> <p>13 half of the equation and only focused on the</p> <p>14 suspension of the long bond, then they would</p> <p>15 see the other, they would only see part of</p> <p>16 the math. They would only see reduction in</p> <p>17 supply at the long end, meaning price goes</p> <p>18 up, yield goes down.</p> <p>19 And so I recall being very careful</p> <p>20 in my conversation with Mr. Lindsey, but, as</p> <p>21 I said, the topic may have come up with Mr.</p> <p>22 Greenspan and also Mr. Hubbard that I thought</p> <p>23 it very difficult to anticipate what the net</p> <p>24 impact on long-term interest rates would be.</p> <p>25 Q. And, I'm sorry, are you saying you</p> | <p style="text-align: right;">Page 89</p> <p>1 Fisher</p> <p>2 MS. WILLIAMS: Objection.</p> <p>3 A. No, I don't know that it was of</p> <p>4 great interest to the rest of the</p> <p>5 administration.</p> <p>6 Q. In other words, the possible</p> <p>7 decline in long-term interest rates you don't</p> <p>8 believe was of great interest to the</p> <p>9 administration?</p> <p>10 MS. WILLIAMS: Objection.</p> <p>11 A. Some members of the administration</p> <p>12 may view a particular level of interest rate</p> <p>13 as being a good or a bad thing. That</p> <p>14 certainly wasn't my view. And I think we all</p> <p>15 had maintained a view in the administration</p> <p>16 that interest rate policy is left to the</p> <p>17 Federal Reserve, monetary policy is something</p> <p>18 to be conducted by independent Central Bank.</p> <p>19 So I don't, I don't view this as</p> <p>20 something that was acutely of interest to the</p> <p>21 rest of the administration, no.</p> <p>22 Q. Let's just back up a little bit.</p> <p>23 Do you recall there being concern</p> <p>24 in August and September of 2001 that the</p> <p>25 economy was slowing down, even before the</p> |

23 (Pages 86 to 89)

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1 Fisher  
2 made?  
3 A. When I was subsequently informed of  
4 the extreme price swings that took place  
5 prior to 10 o'clock, I certainly was  
6 surprised.  
7 Q. And that was notwithstanding the  
8 fact that you were expecting price  
9 volatility?  
10 A. Yes, I was expecting some price  
11 volatility. I did not anticipate it would be  
12 prior to the announcement.  
13 Q. But you were expecting price  
14 volatility after the announcement?  
15 A. Yes.  
16 Q. But you did see the price start to  
17 jump up before you made the announcement?  
18 A. I don't believe I was in a position  
19 to actually follow the market during that  
20 time. I may have been working on another  
21 matter.  
22 Q. But it was brought to your  
23 attention after the fact that that had  
24 happened?  
25 A. Yes, it was brought to my attention

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1 Fisher  
2 after the fact, yes.  
3 Q. So let's just go to the lead up to  
4 that day to October 31.  
5 First of all, did you make any  
6 changes to how Quarterly Refunding  
7 Conferences had been handled in the past by  
8 the Treasury Department?  
9 A. I don't recall doing so on that  
10 occasion.  
11 Q. Do you recall there having been a  
12 press release announcing that you would be  
13 the person giving the presentation at the  
14 Quarterly Refunding Conference?  
15 A. I don't recall that, no.  
16 Q. That wasn't anything that you had  
17 commissioned?  
18 A. I don't recall.  
19 Q. Okay. Now, what room was the press  
20 conference held on October 31?  
21 That's not a grammatical sentence.  
22 What was the room that you used for  
23 the press conference for the quarterly  
24 refunding on October 31, 2001?  
25 A. There is a conference room on the

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1 Fisher  
2 third floor of the Treasury building just  
3 outside of the Office of Domestic Finance.  
4 Q. And do you know what that room is  
5 called within Treasury?  
6 A. Secretary's Conference Room. I  
7 don't recall.  
8 Q. Are you aware of a room called the  
9 Diplomatic Reception Room?  
10 A. That sounds like the name of the  
11 room.  
12 Q. And are you aware of another room  
13 called the Secretary's Conference Room?  
14 A. That would be the matching one on  
15 the far side.  
16 Q. Do you know whether or not the  
17 Diplomatic Reception Room had been used for  
18 the Quarterly Refunding Conference before?  
19 A. Prior to -- no, I don't. As I say,  
20 I never participated in, never attended a  
21 press briefing for the quarterly refunding  
22 before, so I have no knowledge of what rooms  
23 it took place in.  
24 Q. So would it be fair to say you had  
25 no involvement in the selection of which room

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1 Fisher  
2 to use?  
3 A. Yes, that's correct.  
4 Q. Okay. And --  
5 A. I don't recall having any  
6 involvement in that.  
7 Q. Okay. And now prior to the  
8 Quarterly Refunding Conference actually  
9 taking place on October 31, did you have any  
10 discussion with anyone, this is not just on  
11 October 31, but any other time in the lead up  
12 did you have any discussion with anyone in  
13 Treasury about the embargo procedure?  
14 A. Yes. I recall a conversation with  
15 Michelle Davis, the assistant secretary for  
16 public affairs, about my discomfort with the  
17 use of an embargo, that I would have been  
18 much more comfortable with making a direct  
19 announcement either on the internet or  
20 without that use of an embargo.  
21 Q. And why were you uncomfortable with  
22 the use of an embargo?  
23 A. I thought the risk of a leak or  
24 some malfunction, some procedural malfunction  
25 was too high.

26 (Pages 98 to 101)

|   |   |
|---|---|
| <p style="text-align: right;">Page 102</p> <p>1 Fisher</p> <p>2 Q. And so in your view the embargo</p> <p>3 wasn't actually necessary in order for you to</p> <p>4 get out the information that you needed to</p> <p>5 get out?</p> <p>6 A. I thought direct publication on the</p> <p>7 internet, direct release of some kind by the</p> <p>8 Treasury. I didn't -- I mean I didn't have a</p> <p>9 particular proposal, but I would have</p> <p>10 preferred to have avoided the embargo and I</p> <p>11 recall discussing that with Michelle Davis.</p> <p>12 Q. And when did you have that</p> <p>13 discussion with Miss Davis?</p> <p>14 A. I don't recall the date, but again</p> <p>15 probably within the 10 days prior to the</p> <p>16 announcement.</p> <p>17 Q. And did you say anything else to</p> <p>18 Miss Davis other than what you just</p> <p>19 mentioned?</p> <p>20 A. I don't recall the conversation. I</p> <p>21 undoubtedly described the nature of the</p> <p>22 announcements we would be making.</p> <p>23 Q. In other words, you told her that</p> <p>24 this was going to be suspension of the long</p> <p>25 bond, it might meet the price volatility,</p>   | <p style="text-align: right;">Page 104</p> <p>1 Fisher</p> <p>2 than -- I mean I thought she made, I</p> <p>3 understood she made a good explanation of why</p> <p>4 she felt changing press procedures in the</p> <p>5 face of a major announcement was not, was not</p> <p>6 the appropriate thing to do, she felt</p> <p>7 strongly about that, and I deferred to her.</p> <p>8 Q. And again --</p> <p>9 A. I don't recall any other rationale</p> <p>10 on her part.</p> <p>11 Q. Again, as far as I can get any meat</p> <p>12 that may be on that bone, as far as why it</p> <p>13 was that Ms. Davis thought that changing</p> <p>14 procedures at this juncture was a bad idea?</p> <p>15 A. The short notice, sort of -- I</p> <p>16 don't recall anything beyond that, that</p> <p>17 changing procedures on relatively short</p> <p>18 notice she thought was not a good idea.</p> <p>19 Q. Did she make any comment on what</p> <p>20 the pros would think about the change in</p> <p>21 procedures or whether the press would prefer</p> <p>22 to have an embargo, or anything like that?</p> <p>23 A. No, I don't recall that coming up.</p> <p>24 Q. Other than the conversation that</p> <p>25 you had with Ms. Davis, did you discuss in</p> |
| <p style="text-align: right;">Page 103</p> <p>1 Fisher</p> <p>2 that sort of thing?</p> <p>3 A. Yes, it would be a newsworthy item.</p> <p>4 Q. And did she have any response to</p> <p>5 your comment that there really was no need to</p> <p>6 have an embargo?</p> <p>7 A. We had a good conversation, I think</p> <p>8 she may have thought about it. I don't</p> <p>9 recall whether we concluded at the time or we</p> <p>10 had a subsequent conversation. And her view</p> <p>11 was that on reflection, changing procedures</p> <p>12 in the face of a major announcement was not a</p> <p>13 good policy, was not the right way to do it,</p> <p>14 so we had a conversation about the pros and</p> <p>15 cons, and she, in charge of public affairs,</p> <p>16 felt strongly that changing procedures at</p> <p>17 that moment was not a good idea.</p> <p>18 Q. And I'm going to see if I can get</p> <p>19 as best your recollection, and I know you're</p> <p>20 working hard and I appreciate that.</p> <p>21 Beyond just a sort of general</p> <p>22 avoidance or general desire not to change</p> <p>23 procedures, was there anything that Ms. Davis</p> <p>24 identified as a reason to keep the embargo?</p> <p>25 A. No, I don't recall anything other</p> | <p style="text-align: right;">Page 105</p> <p>1 Fisher</p> <p>2 advance of the conference itself anything</p> <p>3 about the embargo?</p> <p>4 A. I'm sorry, I'm not following your</p> <p>5 question.</p> <p>6 Q. I apologize. You mentioned that in</p> <p>7 the run up to the October 31 conference you</p> <p>8 had a discussion with Ms. Davis that you have</p> <p>9 described in which you said let's get rid of</p> <p>10 the embargo either then or in a follow-up</p> <p>11 conversation she said no, let's not change</p> <p>12 procedures now?</p> <p>13 A. Yes, that's correct.</p> <p>14 Q. Apart from that conversation with</p> <p>15 Ms. Davis, did you have any discussion with</p> <p>16 anyone about the embargo before the</p> <p>17 conference itself began?</p> <p>18 A. I don't have a specific</p> <p>19 recollection, but I, it's highly likely that</p> <p>20 I also spoke to other members of her staff,</p> <p>21 Tony Fratto and Betsy Holahan, who each</p> <p>22 worked for her. It's likely that the same</p> <p>23 topic came up, but it's more likely that we</p> <p>24 simply worked on the process of preparing for</p> <p>25 the press conference.</p>  |

27 (Pages 102 to 105)

## **Exhibit D**

### **Deposition of Michele Davis and Cited Exhibits (February 11, 2008)**

Michele Davis

Washington, DC

February 11, 2008

Page 1

1 UNITED STATES DISTRICT COURT  
2 FOR THE DISTRICT OF MASSACHUSETTS  
3 - - - - - X  
4 UNITED STATES SECURITIES AND :  
5 EXCHANGE COMMISSION, :  
6 Plaintiffs, :  
7 v. : Civil Action No.  
8 STEVEN E. NOTHERN, : 05-10983 (NMG)  
9 Defendant. :  
- - - - - X

10  
11 Videotaped Deposition of MICHELE DAVIS  
12 Washington, D.C.  
13 Monday, February 11, 2008  
14 12:57 p.m.  
15  
16

17 \* \* \* \*

18

19

20

21 Reported by: Okeemah S. Henderson, LSR

22

Michele Davis

February 11, 2008

Washington, DC

| Page 2   | Page 4  |
|--|---|
| <p>1 Deposition of MICHELE DAVIS, held at the</p> <p>2 offices of:</p> <p>3</p> <p>4 FOLEY HOAG, LLP</p> <p>5 1875 K Street, Northwest</p> <p>6 Washington, D.C. 20006</p> <p>7 (202) 223-1200</p> <p>8</p> <p>9</p> <p>10</p> <p>11</p> <p>12</p> <p>13</p> <p>14</p> <p>15</p> <p>16</p> <p>17 Pursuant to agreement, before Okeemah S.</p> <p>18 Henderson, Licensed Shorthand Reporter and Notary</p> <p>19 Public in and for The District of Columbia.</p> <p>20</p> <p>21 * * * * *</p> <p>22</p>  | <p>1 I-N-D-E-X</p> <p>2</p> <p>3 Deposition of Michele Davis</p> <p>4 February 11, 2008</p> <p>5</p> <p>6 EXAMINATION BY: PAGE:</p> <p>7 Mr. Theodorou 7, 234</p> <p>8 Mr. Rossetti 155, 247</p> <p>9</p> <p>10 EXHIBITS PAGE</p> <p>11 1 Subpoena 10</p> <p>12 2 Notice of deposition 10</p> <p>13 3 Washington Post article 46</p> <p>14 4 Reuters report 10/31/01 59</p> <p>15 5 E-mail dated 10/31/01 63</p> <p>16 6 Bloomberg message 10/31/01 80</p> <p>17 7 E-mail dated 11/15/01 103</p> <p>18 8 Treasury News memo dated 10/31/01 119</p> <p>19 9 Reuters report on bond suspension 131</p> <p>20 10 E-mail dated 10/31/01 137</p> <p>21 11 E-mail dated 11/5/01 141</p> <p>22 *** Exhibits continued to Page 5.</p> |
| Page 3   | Page 5  |
| <p>1 APPEARANCES</p> <p>2</p> <p>3 ON BEHALF OF MICHELE DAVIS:</p> <p>4 PAUL G. FREEBORNE, ESQUIRE</p> <p>5 U.S. Department of Justice</p> <p>6 Civil Division, Federal Programs Branch</p> <p>7 20 Massachusetts Avenue, Northwest</p> <p>8 Washington, D.C. 20001</p> <p>9 (202) 353-0543</p> <p>10</p> <p>11 ON BEHALF OF DEPARTMENT OF TREASURY:</p> <p>12 TIM KOLLAR, ESQUIRE</p> <p>13 OFFICE OF GENERAL COUNSEL</p> <p>14 U.S. Department of Treasury, Rm. 2019</p> <p>15 1500 Pennsylvania Avenue, Northwest</p> <p>16 Washington, D.C. 20220</p> <p>17</p> <p>18 ON BEHALF OF STEVEN NOTHERN:</p> <p>19 NICHOLAS C. THEODOROU, ESQUIRE</p> <p>20 Foley Hoag LLP</p> <p>21 Seaport World Trade Center</p> <p>22 155 Seaport Boulevard</p> <p>Boston, Massachusetts 02210</p> <p>(617) 832-1000</p> <p>ON BEHALF OF UNITED STATES SECURITIES</p> <p>AND EXCHANGE COMMISSION:</p> <p>JOHN J. ROSSETTI, JR., ESQUIRE</p> <p>ERICA Y. WILLIAMS, ESQUIRE</p> <p>United States Securities and Exchange</p> <p>Commission</p> <p>Division of Enforcement</p> <p>100 F Street, Northeast</p> <p>Washington, D.C. 20549</p> <p>(202) 551-4450</p> <p>ALSO PRESENT:</p> <p>Raymond Heer, III Videographer</p> <p>Matthew Lees, Intern</p> <p>Steven E. Nothern</p> | <p>1 *** Exhibits continued from Page 4.</p> <p>2</p> <p>3 EXHIBITS PAGE</p> <p>4 12 Office of Public Affairs memo 144</p> <p>5 13 E-mail dated 4/5/02 152</p> <p>6 14 E-mail dated 10/29/01 201</p> <p>7 15 E-mail dated 10/29/01 203</p> <p>8 16 Press release 247</p> <p>9</p> <p>10</p> <p>11</p> <p>12</p> <p>13</p> <p>14</p> <p>15</p> <p>16</p> <p>17</p> <p>18</p> <p>19</p> <p>20</p> <p>21 (Exhibits included with transcript.)</p> <p>22</p>  |

2 (Pages 2 to 5)

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Washington, DC

| Page 6  | Page 8  |
|---|---|
| <p>1 P-R-O-C-E-E-D-I-N-G-S<br/>2 (12:57 p.m.)<br/>3 THE VIDEO OPERATOR: This is in the<br/>4 United States District Court for the District of<br/>5 Massachusetts. The plaintiff is the United States<br/>6 Securities and Exchange Commission. The<br/>7 defendant is Steven E. Nothern. Today's date is<br/>8 February 11, 2008. This is Civil Action No.<br/>9 05-10983 (NMG). The witness is Michele Davis.<br/>10 The location of deposition is 1875 K Street,<br/>11 Northwest, Washington, D.C. Appearing on behalf<br/>12 of the plaintiff are John J. Rossetti, Jr. and<br/>13 Erica Y. Williams of the United States Securities<br/>14 and Exchange Commission. Calling the deposition<br/>15 on behalf of the Defendant is Nick Theodorou of<br/>16 Foley Hoag.<br/>17 Appearing on behalf of the witness is Paul<br/>18 G. Freeborne of the United States Department of<br/>19 Justice. Appearing on behalf of the Department of<br/>20 the Treasury is Tim Kollar. Also present is<br/>21 Matthew Lees and Steven E. Nothern.<br/>22 The officer before whom this videotaped</p> | <p>1 defendant, Mr. Nothern, in this matter. I'm going<br/>2 to be taking your deposition this morning. I'm<br/>3 sure you reviewed what the deposition is about and<br/>4 you're testifying under oath.<br/>5 If you have a problem with understanding a<br/>6 question, please, tell me and you also can consult<br/>7 with your counsel at any time during the<br/>8 deposition. Would you, please, state your full<br/>9 name, for the record?<br/>10 A. Michele Eileen Davis.<br/>11 Q. Ms. Davis. Where do you live?<br/>12 A. Arlington -- do you want the address?<br/>13 Q. Yes.<br/>14 A. 1200 North Jefferson Street in<br/>15 Arlington, Virginia.<br/>16 Q. Did you do anything to prepare for the<br/>17 deposition this morning?<br/>18 A. Talked to them about coming over here.<br/>19 Q. So you met with counsel. Whom did you<br/>20 meet with?<br/>21 MR. FREEBORNE: Mr. Freeborne and<br/>22 Mr. Kollar.</p> |
| Page 7  | Page 9  |
| <p>1 deposition is taken and sworn by is Okeemah<br/>2 Henderson. The video camera operator is Raymond<br/>3 Heer representing Alderson Reporting Company, 1111<br/>4 14th Street, Northwest, Suite 400, Washington,<br/>5 D.C. 20005. This videotaped deposition commenced<br/>6 at 12:57:15. Please swear in the witness.<br/>7 Whereupon,<br/>8 MICHELE DAVIS,<br/>9 called as a witness, having been first duly sworn<br/>10 to tell the truth, the whole truth, and nothing<br/>11 but the truth, was examined and testified as<br/>12 follows:<br/>13 MR. THEODOROU: Usual stipulations.<br/>14 MR. ROSSETTI: All objections except as<br/>15 to the form of the question will be reserved until<br/>16 trial.<br/>17 MR. THEODOROU: Including motions to<br/>18 strike.<br/>19 DIRECT EXAMINATION<br/>20 BY MR. THEODOROU:<br/>21 Q. Good morning, Ms. Davis. Ms. Davis,<br/>22 my name is Nicholas Theodorou. I represent the</p>   | <p>1 BY MR. THEODOROU:<br/>2 Q. Did you meet with the SEC attorneys?<br/>3 A. No.<br/>4 Q. Is that a no?<br/>5 A. No.<br/>6 Q. How long did you meet with Mr.<br/>7 Freeborne and Mr. Kollar?<br/>8 A. Maybe 20, 30 minutes, something like<br/>9 that.<br/>10 Q. When did you meet with them?<br/>11 A. This morning.<br/>12 Q. Did you review any documents in your<br/>13 meeting with them?<br/>14 A. Yes.<br/>15 Q. What documents did you review?<br/>16 A. They showed me a few press releases<br/>17 and a couple of E-mails.<br/>18 Q. Do you remember what the E-mails were?<br/>19 MR. FREEBORNE: Are you going to ask if<br/>20 they refreshed her recollection?<br/>21 MR. THEODOROU: Well, I'm just going to<br/>22 ask her if she remembers what the E-mails were as</p>   |

3 (Pages 6 to 9)

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| Page 10   | Page 12  |
|---|--|
| <p>1 opposed to refreshing her recollection?</p> <p>2 BY MR. THEODOROU:</p> <p>3 Q. Do you remember what the E-mails were?</p> <p>4 A. Obviously related to E-mails about</p> <p>5 getting ready for the early refunding</p> <p>6 announcement.</p> <p>7 Q. Do you remember when they were from?</p> <p>8 A. A couple of them were from me.</p> <p>9 Q. Do you remember if they were from</p> <p>10 anybody else?</p> <p>11 A. There were a couple. I don't remember</p> <p>12 who actually sent them.</p> <p>13 Q. Now, other than the Department of</p> <p>14 Justice attorneys and Mr. Kollar from the</p> <p>15 Department of Treasury, did you meet with anybody</p> <p>16 else?</p> <p>17 A. No.</p> <p>18 Q. I want to show you what has been</p> <p>19 marked as exhibits, Northern Exhibits 1 and 2.</p> <p>20 (Deposition Exhibit Nos. 1-2 were marked for</p> <p>21 identification.)</p> <p>22 BY MR. THEODOROU:</p> | <p>1 Q. Do you recall in October, 2001 what</p> <p>2 was your position?</p> <p>3 A. Assistant secretary for public</p> <p>4 affairs.</p> <p>5 Q. At the Department of Treasury?</p> <p>6 A. Yes. Sorry.</p> <p>7 Q. When were you first contacted by the</p> <p>8 SEC regarding this matter? When I refer to this</p> <p>9 matter, I mean the issue surrounding October 31st,</p> <p>10 2001?</p> <p>11 MR. ROSSETTI: Objection.</p> <p>12 A. When was I first contacted by the SEC?</p> <p>13 Q. Yes.</p> <p>14 A. I don't recall if I was ever contacted</p> <p>15 by the SEC.</p> <p>16 BY MR. THEODOROU:</p> <p>17 Q. Was it shortly thereafter, after the</p> <p>18 refunding --</p> <p>19 MR. FREEBORNE: There's been no</p> <p>20 predicate laid for --</p> <p>21 MR. ROSSETTI: I'm sorry. Can you --</p> <p>22 MR. THEODOROU: What is your objection?</p>  |
| Page 11   | Page 13  |
| <p>1 Q. What I have shown you what are</p> <p>2 Exhibits 1 and 2 in this case. Exhibit 1 being a</p> <p>3 subpoena, Exhibit 2 being a notice of deposition.</p> <p>4 Have you seen these before?</p> <p>5 A. No.</p> <p>6 Q. So how did you find out about the</p> <p>7 deposition?</p> <p>8 A. Tim called me.</p> <p>9 Q. When were you called about the</p> <p>10 deposition?</p> <p>11 A. I don't know, it was long enough ago</p> <p>12 that when I saw it on my calendar, I had forgotten</p> <p>13 about it.</p> <p>14 Q. You forgot the date?</p> <p>15 A. I honestly don't know when it was I</p> <p>16 put it on my calendar. I'm sorry.</p> <p>17 Q. So you didn't get a subpoena or the</p> <p>18 notice of deposition?</p> <p>19 A. No.</p> <p>20 Q. But you understand that you were</p> <p>21 subpoenaed for this deposition, correct?</p> <p>22 A. I do now.</p>   | <p>1 MR. ROSSETTI: It's not an objection.</p> <p>2 If the witness can just speak a little more</p> <p>3 clearly or slowly because.</p> <p>4 A. Oh, I'm sorry. I don't know that I</p> <p>5 was ever contacted by the SEC. I don't remember.</p> <p>6 Q. You don't recall being contacted by</p> <p>7 the SEC?</p> <p>8 A. No.</p> <p>9 Q. Were you interviewed by anybody from</p> <p>10 the Treasury about the events October 31st, 2001?</p> <p>11 A. Someone came to see me at another job,</p> <p>12 so it must have been at least 2003 and I just</p> <p>13 don't remember whether it was the Justice</p> <p>14 Department or I don't remember who it was.</p> <p>15 Q. Were you ever interviewed by the</p> <p>16 Treasury Inspector General's office?</p> <p>17 A. I don't remember that. Not that I can</p> <p>18 remember.</p> <p>19 Q. But you were interviewed about what</p> <p>20 happened on October 31st, 2001 at some point,</p> <p>21 correct?</p> <p>22 A. Yes. Like I said, a couple of years</p> |

4 (Pages 10 to 13)

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|   |   |
|---|---|
| <p style="text-align: right;">Page 14</p> <p>1 later because I wasn't there anymore.</p> <p>2 Q. And did, were they lawyers or were</p> <p>3 they law enforcement agents who interviewed you?</p> <p>4 A. I don't remember. I'm sorry. This</p> <p>5 is --</p> <p>6 Q. Did they explain to you what they were</p> <p>7 investigating?</p> <p>8 MR. ROSSETTI: Objection.</p> <p>9 A. I'm sorry. I'm not sure I understand.</p> <p>10 Did they explain to me that they were asking</p> <p>11 questions about that day.</p> <p>12 BY MR. THEODOROU:</p> <p>13 Q. Yes. And what did they tell you they</p> <p>14 were investigating?</p> <p>15 A. I don't remember.</p> <p>16 Q. Do you remember the questions they</p> <p>17 asked you?</p> <p>18 A. No.</p> <p>19 Q. Do you remember the topics they asked</p> <p>20 you about?</p> <p>21 A. I'm sure they asked about, like, the</p> <p>22 proceedings that day.</p>   | <p style="text-align: right;">Page 16</p> <p>1 violated any federal laws or regulations?</p> <p>2 MR. FREEBORNE: Objection.</p> <p>3 A. Like I said, I don't remember any of</p> <p>4 the specific of the conversation. It was several</p> <p>5 years ago.</p> <p>6 BY MR. THEODOROU:</p> <p>7 Q. Generally, do you remember anything</p> <p>8 generally?</p> <p>9 MR. FREEBORNE: What do you mean by</p> <p>10 generally?</p> <p>11 MR. THEODOROU: As opposed to a</p> <p>12 specific recollection or general recollection.</p> <p>13 A. All I remember is we were discussing</p> <p>14 the events of that day. I'm sorry. That's all.</p> <p>15 BY MR. THEODOROU:</p> <p>16 Q. Did the person, was it one person or</p> <p>17 more than one person who interviewed you?</p> <p>18 A. It was either one or two.</p> <p>19 Q. Did the person or persons who</p> <p>20 interviewed you suggest in any way that someone at</p> <p>21 Treasury had violated the laws?</p> <p>22 MR. ROSSETTI: Objection.</p> |
| <p style="text-align: right;">Page 15</p> <p>1 MR. FREEBORNE: Don't speculate. Just</p> <p>2 testify based upon personal knowledge.</p> <p>3 BY MR. THEODOROU:</p> <p>4 Q. What do you recall they asked you</p> <p>5 about?</p> <p>6 A. The events of that day.</p> <p>7 Q. Do you recall more specifically about</p> <p>8 what they asked you about in terms of that day?</p> <p>9 A. No. It was three years ago or longer.</p> <p>10 Q. Do you recall at all being interviewed</p> <p>11 by the SEC?</p> <p>12 A. Like I said, someone came and</p> <p>13 interviewed me. I don't remember what agency they</p> <p>14 were with.</p> <p>15 Q. Did the person who interviewed you</p> <p>16 talk about whether anybody at Treasury may have</p> <p>17 violated federal laws?</p> <p>18 MR. ROSSETTI: Objection.</p> <p>19 A. Not that I recall.</p> <p>20 BY MR. THEODOROU:</p> <p>21 Q. Let me rephrase the question. Did the</p> <p>22 person ask you whether anybody at Treasury had</p> | <p style="text-align: right;">Page 17</p> <p>1 A. I don't remember.</p> <p>2 Q. You don't recall. Were you asked to</p> <p>3 produce any documents to the people interviewing</p> <p>4 you?</p> <p>5 A. Not at that time. No.</p> <p>6 Q. Not at that time?</p> <p>7 A. Because I didn't work at Treasury at</p> <p>8 that time.</p> <p>9 Q. At some point, though, even though you</p> <p>10 did not work at Treasury, were you asked to</p> <p>11 produce documents that you might have in your</p> <p>12 personal possession?</p> <p>13 A. No.</p> <p>14 Q. Did the Treasury Inspector General's</p> <p>15 Office ever ask you to produce documents?</p> <p>16 A. I know we did a lot of things after</p> <p>17 that day, and I don't remember. Again, I don't</p> <p>18 know there was the inspector general. I mean, we</p> <p>19 were all involved in trying to figure out how</p> <p>20 things had happened that day.</p> <p>21 Q. What is our current position at</p> <p>22 Treasury?</p>         |

5 (Pages 14 to 17)

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| Page 18   | Page 20   |
|---|---|
| <p>1 A. Assistant secretary of public affairs.</p> <p>2 Q. What are your responsibilities as</p> <p>3 assistant secretary of public affairs?</p> <p>4 A. Managing all the external</p> <p>5 communications for the Department.</p> <p>6 Q. You have been assistant secretary of</p> <p>7 public affairs for how long?</p> <p>8 A. October of 2006. So 15 months the</p> <p>9 second time.</p> <p>10 MR. FREEBORNE: Yes. I was going to</p> <p>11 say. I think you need to break that down.</p> <p>12 MR. THEODOROU: I'm going to back it</p> <p>13 up.</p> <p>14 BY MR. THEODOROU:</p> <p>15 Q. So in this particular period, the</p> <p>16 latest tenure started when as assistant secretary?</p> <p>17 A. October of 2006.</p> <p>18 Q. So you've been assistant secretary</p> <p>19 since October of 2006, and what did you do before</p> <p>20 that?</p> <p>21 A. Deputy assistant to the president for</p> <p>22 communications.</p> | <p>1 August of '01.</p> <p>2 BY MR. THEODOROU:</p> <p>3 Q. And that was through when, December</p> <p>4 '02?</p> <p>5 A. Yes.</p> <p>6 Q. Now, what did you do between December</p> <p>7 '02 and the Fannie Mae job?</p> <p>8 A. Well, like December 30th, then January</p> <p>9 1st. There was no break there.</p> <p>10 Q. So your next job, so there hasn't been</p> <p>11 any break in terms of the jobs. You went from</p> <p>12 assistant secretary of public affairs to Fannie Mae</p> <p>13 and then after Fannie Mae to The White House and</p> <p>14 then back to Treasury, correct?</p> <p>15 A. Yes.</p> <p>16 Q. What did you do before Fannie Mae?</p> <p>17 A. I worked at Treasury.</p> <p>18 Q. What did you do before that first</p> <p>19 stint at Treasury?</p> <p>20 A. I worked on Capitol Hill.</p> <p>21 Q. What did you do there?</p> <p>22 A. I was communications director for</p>   |
| Page 19   | Page 21   |
| <p>1 Q. For all communications?</p> <p>2 A. No. Form policy communications.</p> <p>3 Q. How long did you do that?</p> <p>4 A. That was July of 2005 to October of</p> <p>5 2006.</p> <p>6 Q. What did you do before that?</p> <p>7 A. Senior vice president for regulatory</p> <p>8 policy at Fannie Mae.</p> <p>9 Q. And how long were you at Fannie Mae?</p> <p>10 A. January of '03 to July of '05.</p> <p>11 Q. Why did you leave Fannie Mae?</p> <p>12 A. Because it was a really interesting</p> <p>13 job at The White House.</p> <p>14 Q. What did you do before Fannie Mae?</p> <p>15 A. Assistant secretary for public affairs</p> <p>16 at Treasury.</p> <p>17 Q. When did you start as assistant</p> <p>18 secretary of public affairs at Treasury?</p> <p>19 MR. FREEBORNE: During this stint, I</p> <p>20 take it.</p> <p>21 MR. THEODOROU: During that stint.</p> <p>22 A. During that stint. Okay. That was in</p>        | <p>1 house majority leader, Dick Army.</p> <p>2 Q. How long did you do that?</p> <p>3 A. From 1995 through the end of 2000.</p> <p>4 MR. ROSSETTI: What was that?</p> <p>5 A. Through to end of 2001. January of</p> <p>6 2001 --</p> <p>7 MR. ROSSETTI: If you could just speak</p> <p>8 up. You're trailing off there.</p> <p>9 THE WITNESS: Oh, I'm sorry.</p> <p>10 MR. THEODOROU: Take your time, speak</p> <p>11 up. Make sure Mr. Rossetti can hear about your</p> <p>12 answer to my next question.</p> <p>13 BY MR. THEODOROU:</p> <p>14 Q. What did you do as the senior vice</p> <p>15 president for the regulatory affairs of Fannie</p> <p>16 Mae?</p> <p>17 A. I managed basically, like, an internal</p> <p>18 (inaudible) for the company in looking at housing</p> <p>19 policy issues and regulatory reform proposals.</p> <p>20 Q. What is your educational background?</p> <p>21 A. I have a masters in economics.</p> <p>22 Q. From where?</p> |

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|--|--|
| <p>1 A. American University.</p> <p>2 Q. When did you get that?</p> <p>3 A. 1991.</p> <p>4 Q. Where did you get your undergraduate</p> <p>5 degree?</p> <p>6 A. Georgetown University.</p> <p>7 Q. And in what?</p> <p>8 A. Bachelor of science in foreign</p> <p>9 service.</p> <p>10 Q. When did you get that degree?</p> <p>11 A. 1988.</p> <p>12 Q. 1988?</p> <p>13 A. 1988.</p> <p>14 Q. I want to direct your attention to</p> <p>15 your first stint as assistant secretary of public</p> <p>16 affairs, which you testified started around August</p> <p>17 of 2001?</p> <p>18 A. Yes. I was there from January on, but</p> <p>19 I wasn't confirmed in the position until August.</p> <p>20 Q. So you started in January, 2001?</p> <p>21 A. Yes. At the Department. Yes.</p> <p>22 Q. Now, when you started as assistant</p>   | <p>1 secretary of public affairs? Did anyone ever tell</p> <p>2 you what your job responsibilities were and</p> <p>3 duties?</p> <p>4 MR. ROSSETTI: Objection.</p> <p>5 A. I mean, there's obviously a lot -- I</p> <p>6 mean, you go through the transition office and</p> <p>7 work on the responsibilities to the Department and</p> <p>8 all the other issues. My background in this</p> <p>9 communications was plenty in terms of talking how</p> <p>10 to deal with reporters.</p> <p>11 BY MR. THEODOROU:</p> <p>12 Q. Did you ever receive any training on</p> <p>13 how Treasury press conferences were to be</p> <p>14 conducted?</p> <p>15 MR. FREEBORNE: In what respect?</p> <p>16 BY MR. THEODOROU:</p> <p>17 Q. Well, I'm going to build a case</p> <p>18 foundation, generally, how press conferences were</p> <p>19 to be conducted, what was to be distributed to the</p> <p>20 press, what kind of information should be given to</p> <p>21 the press, things of that nature?</p> <p>22 MR. ROSSETTI: Objection.</p> |
| Page 23  | Page 25  |
| <p>1 secretary of public affairs, did you receive any</p> <p>2 type of training as to what you were supposed to</p> <p>3 do in your job?</p> <p>4 A. Training?</p> <p>5 Q. As to how you were supposed to handle</p> <p>6 the press, what you were supposed to do with a</p> <p>7 press?</p> <p>8 A. My background on Capitol Hill was more</p> <p>9 than enough for that.</p> <p>10 MR. ROSSETTI: Objection. I'm sorry.</p> <p>11 After he asks the question, if you could first,</p> <p>12 let him ask the question before you answer, but if</p> <p>13 you could just give a moment, I might have an</p> <p>14 objection. A lot of this is for the record so</p> <p>15 we're not all talking over each other.</p> <p>16 MR. THEODOROU: And you'll still be</p> <p>17 required to answer even after his objection. He</p> <p>18 just wants to get that on the record, whatever it</p> <p>19 is.</p> <p>20 BY MR. THEODOROU:</p> <p>21 Q. But did you ever receive any training</p> <p>22 as to what you were supposed to do as assistant</p> | <p>1 A. I don't really follow the question. I</p> <p>2 mean, I don't know who would, that's a decision</p> <p>3 that the Department makes and the secretary -- I</p> <p>4 mean, that's not, there is no --</p> <p>5 BY MR. THEODOROU:</p> <p>6 Q. Let me be more specific. Did you ever</p> <p>7 receive any training on the use of embargoes at</p> <p>8 press conferences?</p> <p>9 MR. FREEBORNE: When you say training,</p> <p>10 do you mean formal training?</p> <p>11 BY MR. THEODOROU:</p> <p>12 Q. We'll go from formal to informal. Did</p> <p>13 you ever receive any training --</p> <p>14 A. I'm not even sure who would do that.</p> <p>15 Q. Well, my question isn't whether you're</p> <p>16 sure or not. My question is did you ever get any</p> <p>17 training on the use of embargoes with the press?</p> <p>18 MR. ROSSETTI: Objection.</p> <p>19 A. I had already been working in public</p> <p>20 affairs for a number of years.</p> <p>21 BY MR. THEODOROU:</p> <p>22 Q. Were you familiar with the use of</p>    |

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| <p>1 embargoes?</p> <p>2 A. Yes.</p> <p>3 Q. In what context?</p> <p>4 A. Having issued press releases in</p> <p>5 previous jobs.</p> <p>6 Q. Had you used embargoes on the press in</p> <p>7 previous jobs?</p> <p>8 A. Yes. In some circumstances. Yes.</p> <p>9 Q. Which --</p> <p>10 MR. ROSSETTI: I'm sorry.</p> <p>11 A. In some circumstances. Yes.</p> <p>12 BY MR. THEODOROU:</p> <p>13 Q. And what circumstances had you used</p> <p>14 embargoes?</p> <p>15 A. Whenever there was a reason to give</p> <p>16 reporters a text or anything ahead of time that</p> <p>17 was going to be delivered. If someone was going</p> <p>18 to give remarks at night, for example. Reporters</p> <p>19 don't want to wait around for that, we'd give them</p> <p>20 the embargo text earlier in the afternoon so they</p> <p>21 would have it embargoed because he wanted to do an</p> <p>22 interview ahead of announcement but not have it</p>  | <p>1 Q. Were there particular procedures that</p> <p>2 governed the use of embargoes?</p> <p>3 A. No. I mean, not that I'm aware of. I</p> <p>4 mean, not that, I guess I don't understand. Again</p> <p>5 I don't understand the question.</p> <p>6 Q. Were there any written procedures that</p> <p>7 governed the use of embargoes when you, for</p> <p>8 instance, let's take the first instance, when you</p> <p>9 gave information that was going to be released</p> <p>10 late at night, you gave the information earlier in</p> <p>11 the day, was there any written procedures as to</p> <p>12 how the embargo worked in that situation?</p> <p>13 A. I have never seen anything written</p> <p>14 down about an embargo. It's a common practice.</p> <p>15 It's a widely-understood practice in public</p> <p>16 affairs and among the media.</p> <p>17 Q. So you've never seen any written</p> <p>18 procedures that govern the use of embargoes?</p> <p>19 A. No.</p> <p>20 Q. Are there any written procedures in</p> <p>21 place at Treasury today governing the use of</p> <p>22 embargoes?</p> |
| Page 27   | Page 29  |
| <p>1 hit the press until the announcement was done so</p> <p>2 there would be full contact to the announcement.</p> <p>3 It's a variety of circumstances.</p> <p>4 Q. What jobs had you used embargoes?</p> <p>5 A. In working on Capitol Hill and my job</p> <p>6 before that I was, I did a lot of interviews</p> <p>7 working for a group called Citizens for a Sound</p> <p>8 Economy.</p> <p>9 Q. Well, let's talk about the use of</p> <p>10 embargoes at Capitol Hill. What circumstances</p> <p>11 when you were at Capitol Hill were embargoes used?</p> <p>12 A. Again, if there was something going to</p> <p>13 be happening late at night that you would want to</p> <p>14 give it out to the media early so that, just so</p> <p>15 they would have it, so you wouldn't have to be</p> <p>16 tracking down whom.</p> <p>17 Or again, you might grant an interview to</p> <p>18 somebody ahead of an announcement and embargo it</p> <p>19 because just schedule didn't permit for the</p> <p>20 interview to take place after. It just was</p> <p>21 managing the new cycle and depending on the time of</p> <p>22 day.</p> | <p>1 A. No.</p> <p>2 Q. There was no embargo procedures that</p> <p>3 were developed after October, 2001 about embargoes</p> <p>4 and how to deal with press conferences at</p> <p>5 Treasury?</p> <p>6 MR. ROSSETTI: Objection.</p> <p>7 MR. FREEBORNE: Is your question as to</p> <p>8 whether there were written policies?</p> <p>9 BY MR. THEODOROU:</p> <p>10 Q. Yes. I'm asking are there any written</p> <p>11 procedures today on how embargoes are to be used</p> <p>12 at Treasury?</p> <p>13 A. No.</p> <p>14 Q. Are there written procedures as to how</p> <p>15 press conferences should be conducted?</p> <p>16 A. Every press conference is a unique</p> <p>17 event, so no.</p> <p>18 Q. When you took over the first time as</p> <p>19 assistant secretary of public affairs in 2001, did</p> <p>20 you receive any training on how to handle</p> <p>21 market-sensitive information?</p> <p>22 MR. ROSSETTI: Objection.</p>  |

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| <p>1 MR. FREEBORNE: Training in what</p> <p>2 respect?</p> <p>3 BY MR. THEODOROU:</p> <p>4 Q. Training on the disclosure of</p> <p>5 market-sensitive information for the press or any</p> <p>6 other people outside of Treasury?</p> <p>7 A. Certainly there was an awareness of</p> <p>8 market-sensitive information. Again, I don't know</p> <p>9 what you mean by training.</p> <p>10 Q. Well, did anybody instruct you as to</p> <p>11 this is how market-sensitive information should be</p> <p>12 handled or disclosed to others outside of</p> <p>13 Treasury? Did you receive any type of training on</p> <p>14 that?</p> <p>15 A. Every release of information is a we</p> <p>16 would go through the process by release, not in</p> <p>17 a -- that would be very difficult to do in a</p> <p>18 general sense.</p> <p>19 Q. So is your answer that you never got</p> <p>20 any formal training on it?</p> <p>21 MR. ROSSETTI: Objection.</p> <p>22 A. Again, I don't know who would do that.</p> | <p>1 went through the procedures that we were going to</p> <p>2 use for any press event where we were releasing</p> <p>3 information by event.</p> <p>4 Q. So the procedures regarding the</p> <p>5 release of information at press conferences was</p> <p>6 they were developed press conference by press</p> <p>7 conference?</p> <p>8 MR. ROSSETTI: Objection.</p> <p>9 A. If it was a unique press conference,</p> <p>10 if it was something that was done every three</p> <p>11 months, would be routine each time.</p> <p>12 BY MR. THEODOROU:</p> <p>13 Q. Who was your predecessor as assistant</p> <p>14 secretary?</p> <p>15 A. Michelle Smith.</p> <p>16 Q. Did you ever discuss, have any</p> <p>17 discussions with Michelle Smith about how to</p> <p>18 handle press conferences on quarterly refunding</p> <p>19 announcements?</p> <p>20 A. She and I had a lot of conversations</p> <p>21 kind of in transition about a lot, the whole</p> <p>22 variety of issues there. I don't recall that</p>       |
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| <p>1 BY MR. THEODOROU:</p> <p>2 Q. So when you say you don't know who</p> <p>3 would do that, is that an answer --</p> <p>4 A. I mean, no.</p> <p>5 Q. A yes or no question?</p> <p>6 A. I mean, no. There was no single</p> <p>7 training.</p> <p>8 Q. Did you receive any kind of training</p> <p>9 regarding the release of information at a</p> <p>10 quarterly refunding announcement?</p> <p>11 MR. FREEBORNE: I'm sorry. Can I have</p> <p>12 that question read back? I didn't have an</p> <p>13 understanding.</p> <p>14 MR. ROSSETTI: Objection.</p> <p>15 BY MR. THEODOROU:</p> <p>16 Q. How about if I just rephrase it. Did</p> <p>17 you ever receive any training as to how</p> <p>18 information should be released to the press at a</p> <p>19 quarterly refunding announcement?</p> <p>20 A. We had, every press event was a unique</p> <p>21 event and at every, for all of those things when</p> <p>22 we first, first we were all new in 2001, so we</p>                                 | <p>1 topic in particular, but we could very well have.</p> <p>2 I don't know.</p> <p>3 Q. So you don't specifically recall but</p> <p>4 you could have had a discussion about how to</p> <p>5 handle --</p> <p>6 A. Yes. Because we walked through, I</p> <p>7 mean, she was very helpful in walking through all</p> <p>8 the various public affairs activities.</p> <p>9 Q. Did you ever discuss how embargoes</p> <p>10 should be used?</p> <p>11 A. Again, we walked through a variety of</p> <p>12 things there, and I'm sure she would have told me</p> <p>13 here's how we did it or here's how she did it on a</p> <p>14 whole variety of things. Whether it was specific</p> <p>15 to that question, I just don't remember.</p> <p>16 Q. So your testimony is you don't recall</p> <p>17 her talking to you about it or you don't recall</p> <p>18 what she said?</p> <p>19 MR. ROSSETTI: Objection.</p> <p>20 A. Either one.</p> <p>21 BY MR. THEODOROU:</p> <p>22 Q. So you don't recall her talking to you</p> |

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|--|---|
| <p>1 about how embargoes should be used?</p> <p>2 A. No.</p> <p>3 Q. Do you recall talking to her about how</p> <p>4 quarterly refunding press conferences should be</p> <p>5 conducted?</p> <p>6 A. No, I don't.</p> <p>7 Q. Now, directing your attention to</p> <p>8 October 31st, 2001, at that time, did Treasury</p> <p>9 have any written policies and procedures on how</p> <p>10 market-sensitive information should be released to</p> <p>11 the press or the public?</p> <p>12 MR. ROSSETTI: Objection.</p> <p>13 MR. THEODOROU: You still have to</p> <p>14 answer.</p> <p>15 A. Not that I remember.</p> <p>16 BY MR. THEODOROU:</p> <p>17 Q. So is your testimony you can't recall</p> <p>18 or is it that Treasury did not have any?</p> <p>19 MR. ROSSETTI: Objection.</p> <p>20 A. I don't remember any.</p> <p>21 BY MR. THEODOROU:</p> <p>22 Q. Now, again directing your attention to</p>  | <p>1 your understanding of Treasury's policy, if there</p> <p>2 was a policy, on the use of embargoes?</p> <p>3 A. I'm not sure I understand.</p> <p>4 Q. Let me rephrase that. Embargoes were</p> <p>5 used at press conferences when you were at</p> <p>6 Treasury, right?</p> <p>7 MR. ROSSETTI: Objection.</p> <p>8 BY MR. THEODOROU:</p> <p>9 Q. Were embargoes used?</p> <p>10 A. At press conferences and not at press</p> <p>11 conferences.</p> <p>12 Q. Well, let's talk about press</p> <p>13 conferences. Did Treasury have a policy on the</p> <p>14 use of embargoes at press conference?</p> <p>15 A. Like I said, every press conference is</p> <p>16 different.</p> <p>17 Q. What did you understand in October,</p> <p>18 2001 -- strike that. What was your understanding</p> <p>19 of the term embargo in October, 2001?</p> <p>20 A. It's a practice within the public</p> <p>21 affairs, within the media and it means that</p> <p>22 whatever is embargoed cannot be distributed or put</p>                      |
| Page 35  | Page 37   |
| <p>1 October 31st, 2001, did Treasury have any written</p> <p>2 policies and procedures on how press conferences</p> <p>3 should be conducted?</p> <p>4 A. No. Every press conference is a</p> <p>5 different event.</p> <p>6 Q. As of October 31st, 2001, did Treasury</p> <p>7 have any written policies and procedures on how</p> <p>8 embargoes were to be used at press conferences?</p> <p>9 A. Not that I remember.</p> <p>10 Q. And again, directing your attention to</p> <p>11 October, 2001 did Treasury have any written</p> <p>12 policies and procedures on how information was to</p> <p>13 be released to the press at a quarterly refunding</p> <p>14 announcement?</p> <p>15 A. I don't remember if that was in</p> <p>16 writing or not.</p> <p>17 Q. Now, as of October 31st, 2001 -- and</p> <p>18 by the way when I ask these questions, I'm not</p> <p>19 trying to trip you up or anything. I am trying to</p> <p>20 just find out generally what the information is?</p> <p>21 A. Yes.</p> <p>22 Q. So as of October 31st, 2001, what was</p> | <p>1 on the wire or on the air or anywhere into the</p> <p>2 public domain before that time.</p> <p>3 Q. Did an embargo prevent a person from</p> <p>4 disclosing the information to anybody else? In</p> <p>5 other words, did the embargo mean that the person</p> <p>6 attending the press conference could not disclose</p> <p>7 it to anyone until an embargo time?</p> <p>8 MR. ROSSETTI: Objection.</p> <p>9 A. I mean, our use of it is only with the</p> <p>10 media and it means that the media not make it</p> <p>11 public.</p> <p>12 BY MR. THEODOROU:</p> <p>13 Q. So the use of the embargo at Treasury</p> <p>14 was only with the media?</p> <p>15 A. That's what an embargo is, it's a</p> <p>16 media practice.</p> <p>17 Q. Did that mean that a reporter who got</p> <p>18 embargoed information at a press conference could</p> <p>19 not discuss the information with another Treasury,</p> <p>20 with a Treasury employee after he or she got the</p> <p>21 information?</p> <p>22 MR. ROSSETTI: Objection.</p> |

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| <p>1 A. I think that's a yes or no question</p> <p>2 but I don't know which way yes goes. I'm sorry.</p> <p>3 BY MR. THEODOROU:</p> <p>4 Q. In other words, if there was an</p> <p>5 embargo at a press conference and information was</p> <p>6 given to the press and there was a time when the</p> <p>7 information was going to be released to the</p> <p>8 public, did that mean that a reporter who received</p> <p>9 the so-called embargoed information could not</p> <p>10 discuss that information with a Treasury employee?</p> <p>11 A. If someone who already knows about it</p> <p>12 inside Treasury.</p> <p>13 Q. What about someone in the Treasury who</p> <p>14 didn't know about it?</p> <p>15 A. I have never run across that.</p> <p>16 Q. Could a reporter who received the</p> <p>17 embargo information in October, 2001 at a press</p> <p>18 conference relay that information to his editor</p> <p>19 during the embargo period?</p> <p>20 MR. ROSSETTI: Objection.</p> <p>21 A. Yes. That would be -- but that's an</p> <p>22 accepted practice within the media.</p> | <p>1 up, correct?</p> <p>2 MR. ROSSETTI: Objection.</p> <p>3 A. You know, I think the different media</p> <p>4 work different ways but in order to get, you know,</p> <p>5 get things processed so that they come out in the</p> <p>6 wire on time, now the technology is different, but</p> <p>7 then you often had to go through an editors desk</p> <p>8 to get onto the wire.</p> <p>9 BY MR. THEODOROU:</p> <p>10 Q. But a reporter who attended a press</p> <p>11 conference where there was a time set at which the</p> <p>12 information would be disclosed to the public could</p> <p>13 get that information before the time at which it</p> <p>14 was going to be disclosed and could send it to his</p> <p>15 or her editor; is that correct?</p> <p>16 MR. ROSSETTI: Objection.</p> <p>17 A. Yes.</p> <p>18 MR. THEODOROU: Now --</p> <p>19 A. Keeping it within the embargo or the</p> <p>20 media organization respecting the embargo.</p> <p>21 BY MR. THEODOROU:</p> <p>22 Q. I'm going to call that pre embargo</p>  |
| Page 39  | Page 41  |
| <p>1 BY MR. THEODOROU:</p> <p>2 Q. So was that accepted practice?</p> <p>3 A. Yes.</p> <p>4 Q. It was a practice. So a reporter who</p> <p>5 got the embargoed information during the press</p> <p>6 conference could relay that to his editor,</p> <p>7 correct?</p> <p>8 A. That would be my understanding of an</p> <p>9 embargo.</p> <p>10 Q. What pre embargo disclosures were</p> <p>11 permissible --</p> <p>12 MR. FREEBORNE: I think you have to</p> <p>13 give a little more. It's a pretty broad question.</p> <p>14 MR. ROSSETTI: Objection.</p> <p>15 BY MR. THEODOROU:</p> <p>16 Q. Well, let me ask you this. There's a</p> <p>17 team at which it becomes public, right?</p> <p>18 A. Yes.</p> <p>19 Q. And you just testified that it was</p> <p>20 customary for a reporter or it was acceptable for</p> <p>21 a reporter to call his or her editor with</p> <p>22 embargoed information before the embargo time was</p>   | <p>1 disclosure, right, it's pre embargo time</p> <p>2 disclosure. Were there other disclosures that</p> <p>3 were permissible besides calling your editor?</p> <p>4 MR. FREEBORNE: You mean recipients?</p> <p>5 BY MR. THEODOROU:</p> <p>6 Q. Yes. Were there other instances,</p> <p>7 besides calling an editor, where someone who</p> <p>8 attended a press conference whether it was an</p> <p>9 embargo could relay that information.</p> <p>10 In other words, were there other allowable</p> <p>11 instances besides sending it to an editor?</p> <p>12 MR. FREEBORNE: Focused on recipients</p> <p>13 though?</p> <p>14 MR. THEODOROU: Correct.</p> <p>15 A. I can't think of any but there might</p> <p>16 be some circumstance but I can't think of any.</p> <p>17 BY MR. THEODOROU:</p> <p>18 Q. And as of October 31st, 2001, do you</p> <p>19 know of any other instances besides sending the</p> <p>20 information to an editor where a reporter could</p> <p>21 disclose the information before the embargo time?</p> <p>22 A. Could like was physically able to or</p> |

11 (Pages 38 to 41)

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|--|---|
| <p style="text-align: right;">Page 42</p> <p>1 could --</p> <p>2 Q. Just relay the information besides</p> <p>3 sending it to an editor?</p> <p>4 A. Like --</p> <p>5 MR. THEODOROU: Let me clarify the</p> <p>6 question before you all jump. You know, he's</p> <p>7 counsel for the witness, I know you're counsel for</p> <p>8 the party, but let me just clarify the question.</p> <p>9 BY MR. THEODOROU:</p> <p>10 Q. You just testified that it was</p> <p>11 customary or it was permissible for a reporter to</p> <p>12 relay the information he or she learns at a press</p> <p>13 conference in which there is an embargo --</p> <p>14 A. In order to facilitate release of the</p> <p>15 time of the embargo.</p> <p>16 Q. -- could send that information to an</p> <p>17 editor, correct?</p> <p>18 A. To facilitate the --</p> <p>19 Q. Do you know of any other instances in</p> <p>20 October, 2001 where besides sending it to an</p> <p>21 editor, a reporter could send the information to</p> <p>22 someone else outside of the press conference</p> | <p style="text-align: right;">Page 44</p> <p>1 October 31st, 2001 conference, quarterly refunding</p> <p>2 conference, do you know how Treasury set the</p> <p>3 embargo times for prior refunding conferences?</p> <p>4 A. I don't recall anymore. Again, these</p> <p>5 things are usually depend on the timing of the</p> <p>6 event, the timing, how much time you think you</p> <p>7 need in a room to talk about things. I mean, it's</p> <p>8 they're each individually unique.</p> <p>9 Q. Did you ever learn after October 31st,</p> <p>10 2001 how the embargo times were set?</p> <p>11 A. How the embargo times were set --</p> <p>12 Q. For quarterly refunding conferences?</p> <p>13 A. I don't remember hearing of any</p> <p>14 specific rule. We would send an embargo based on</p> <p>15 the time that whoever was going make a</p> <p>16 presentation was going to make the presentation,</p> <p>17 how long it was going to take and how long we</p> <p>18 wanted for Q and A before the event was over.</p> <p>19 Q. Did you ever learn what factors --</p> <p>20 strike that. Again, before the October 31st, 2001</p> <p>21 refunding conference, do you know what factors</p> <p>22 went into determining what the embargo time should</p> |
| <p style="text-align: right;">Page 43</p> <p>1 before the release of the information?</p> <p>2 A. Without it being an embargo violation?</p> <p>3 Q. Correct. Besides an editor?</p> <p>4 A. Not that I can think of.</p> <p>5 Q. Now, in your role as an assistant</p> <p>6 secretary in 2001 beginning in January, did you</p> <p>7 normally attend quarterly refunding press</p> <p>8 conferences?</p> <p>9 A. No.</p> <p>10 Q. Do you recall, did you attend the</p> <p>11 press conference on October 31st, 2001?</p> <p>12 A. No.</p> <p>13 Q. Do you recall whether you attended</p> <p>14 assistant secretary Brian Roseboro's quarterly</p> <p>15 refunding press conference in August of 2001?</p> <p>16 A. I don't think I went. I don't</p> <p>17 remember going.</p> <p>18 Q. Now, before October 31st, 2001, do you</p> <p>19 know how embargo times were set for quarterly</p> <p>20 refunding conferences? How they were set?</p> <p>21 A. What do you mean, like who decided?</p> <p>22 Q. Yes. How did they set, before the</p>                        | <p style="text-align: right;">Page 45</p> <p>1 be?</p> <p>2 A. I think it was just those that I just</p> <p>3 said, what time was going to be the announcement,</p> <p>4 how much time we thought the discussion would</p> <p>5 take, so that the embargo, so that it would all</p> <p>6 happen before the embargo was over.</p> <p>7 Q. When you say discussion?</p> <p>8 A. Q and A with reporters, with whatever.</p> <p>9 Q. Were you aware or did you ever become</p> <p>10 aware that for quarterly refunding conferences</p> <p>11 before October 31st, 2001 public affair officials</p> <p>12 as Treasury pulled the reporters present to</p> <p>13 determine how much time they needed to prepare</p> <p>14 their stories?</p> <p>15 MR. ROSSETTI: Objection.</p> <p>16 A. I know we, that's a normal practice on</p> <p>17 a lot of things, not just quarterly refunding. We</p> <p>18 try to do exactly that to make sure they have</p> <p>19 enough time so they can write a complete story</p> <p>20 rather than just having to scan something and not</p> <p>21 necessarily understand it and put out headlines.</p> <p>22 BY MR. THEODOROU:</p>  |

12 (Pages 42 to 45)

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| Page 46   | Page 48   |
|---|---|
| <p>1 Q. So that before October 31st, 2001, did</p> <p>2 Treasury set fixed embargo times in advance?</p> <p>3 MR. FREEBORNE: What do you mean by</p> <p>4 fixed?</p> <p>5 BY MR. THEODOROU:</p> <p>6 Q. Before the press conference. Did they</p> <p>7 set an embargo time in advance or was it through</p> <p>8 this informal process you just described?</p> <p>9 A. Again, it would depend on the event.</p> <p>10 MR. ROSSETTI: I don't know if you were</p> <p>11 talking strictly refunding conferences or all</p> <p>12 press conferences.</p> <p>13 MR. THEODOROU: No. I'm talking about</p> <p>14 refunding.</p> <p>15 A. I don't know.</p> <p>16 MR. THEODOROU: Mark this, please.</p> <p>17 (Deposition Exhibit No. 3 was marked for</p> <p>18 identification.)</p> <p>19 BY MR. THEODOROU:</p> <p>20 Q. I want to show you what's been marked</p> <p>21 as Northern Exhibit No. 3. Do you see that? It's</p> <p>22 a Washington Post article, Ms. Davis?</p>  | <p>1 for release at 10 a.m., meaning that the people</p> <p>2 present understood that their access to the</p> <p>3 information was conditioned on their agreement not</p> <p>4 to distribute it publically before 10 a.m., but</p> <p>5 reporters and others who attended were not</p> <p>6 required to remain in the room until the embargo</p> <p>7 expired.</p> <p>8 The reporters, many of whom work regularly</p> <p>9 in the building's press room, left to prepare</p> <p>10 stories to be sent to their media outlets and were</p> <p>11 released at 10 a.m." Do you see that?</p> <p>12 A. Yes.</p> <p>13 Q. And this is making reference, when we</p> <p>14 say to Mr. Fisher's statement, that's a reference</p> <p>15 to his statement on October 31st, 2001, correct?</p> <p>16 A. Yes.</p> <p>17 Q. Now, look at a next paragraph, "That</p> <p>18 procedure was far more casual, for instance, than</p> <p>19 that followed regularly at Treasury when the</p> <p>20 results of securities auctions are announced. In</p> <p>21 such cases, reporters are given the information</p> <p>22 ahead of time so they can prepare stories but they</p> |
| Page 47   | Page 49   |
| <p>1 A. Yes.</p> <p>2 Q. And the top it says, "Treasury</p> <p>3 suspects insider bond trading."</p> <p>4 A. Yes. I'm sorry.</p> <p>5 Q. Do you see that? And it's dated</p> <p>6 November 6, 2001?</p> <p>7 A. Yes.</p> <p>8 Q. Now, before I ask you something about</p> <p>9 this press conference, I mean, excuse me, this</p> <p>10 article. Did Treasury's procedures for quarterly</p> <p>11 refunding announcements, excuse me, did Treasury's</p> <p>12 embargo procedures for quarterly refunding</p> <p>13 announcements did they differ from the embargo</p> <p>14 procedures that you used for securities auctions?</p> <p>15 A. I don't remember.</p> <p>16 Q. Well, let's turn to a few paragraphs</p> <p>17 down and if you want to read the whole thing, feel</p> <p>18 free to read it. Okay. You see a few paragraphs</p> <p>19 down, seven paragraphs down it says, "Treasury</p> <p>20 officials announce both before and at the end of</p> <p>21 the news conference that Fisher's statement and</p> <p>22 his replies to reporters' questions were embargoed</p> | <p>1 are kept in the press room until the release time</p> <p>2 when they are all allowed to send their stories</p> <p>3 out simultaneously." Do you see that paragraph?</p> <p>4 A. Yes.</p> <p>5 Q. Now, was there the case in October,</p> <p>6 2001 of how securities auctions were handled?</p> <p>7 MR. ROSSETTI: Objection.</p> <p>8 MR. FREEBORNE: If you know.</p> <p>9 A. I just don't recall.</p> <p>10 BY MR. THEODOROU:</p> <p>11 Q. Do you recall, other than securities</p> <p>12 auctions, where the embargoed procedures were</p> <p>13 different than quarterly refunding announcements?</p> <p>14 MR. FREEBORNE: That assumes an answer</p> <p>15 to your previous question.</p> <p>16 MR. THEODOROU: No other than</p> <p>17 securities auctions.</p> <p>18 MR. FREEBORNE: Well, she didn't know</p> <p>19 about any of the securities auctions.</p> <p>20 MR. THEODOROU: Well, she's got to</p> <p>21 answer it may way.</p> <p>22 MR. FREEBORNE: But you're assuming</p>  |

13 (Pages 46 to 49)

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|---|--|
| <p style="text-align: right;">Page 50</p> <p>1 again --</p> <p>2 MR. THEODOROU: Let's assume -- I don't</p> <p>3 want to get into an argument. Let me rephrase the</p> <p>4 question. I'm not trying to trick you, it's</p> <p>5 pretty -- securities auctions, this newspaper</p> <p>6 reporter is basically saying that securities</p> <p>7 auctions, they basically had a lock-down</p> <p>8 procedure; isn't that what they're really saying</p> <p>9 here?</p> <p>10 MR. ROSSETTI: Objection.</p> <p>11 A. More or less. Yes.</p> <p>12 BY MR. THEODOROU:</p> <p>13 Q. Now, is it your testimony that in</p> <p>14 October, 2001 you didn't know how securities</p> <p>15 auctions' press conferences were conducted or how</p> <p>16 embargoes were implemented?</p> <p>17 MR. ROSSETTI: Objection.</p> <p>18 A. That's not what I said. I said I</p> <p>19 don't recall now.</p> <p>20 BY MR. THEODOROU:</p> <p>21 Q. So you don't recall now. Besides</p> <p>22 securities auctions, were lock-down procedures</p>  | <p style="text-align: right;">Page 52</p> <p>1 I can probe it.</p> <p>2 MR. FREEBORNE: She said she doesn't</p> <p>3 recall what the procedures are in terms of</p> <p>4 securities auctions. So I really do think it's</p> <p>5 an unfair question. If you want to rephrase it,</p> <p>6 that's fine.</p> <p>7 BY MR. THEODOROU:</p> <p>8 Q. All right. Let me rephrase it. You</p> <p>9 don't know -- we'll leave it like that. Let's go</p> <p>10 a few more paragraphs down. Do you see where it</p> <p>11 says Michele Davis?</p> <p>12 A. Yes.</p> <p>13 Q. "The Department's assistant secretary</p> <p>14 of public affairs said the early posting was human</p> <p>15 error in her office. It was a careless mistake,</p> <p>16 she told reporters."</p> <p>17 Now, look at the paragraph before that. It</p> <p>18 says, "The Treasury investigations have not</p> <p>19 determined how anyone received information about</p> <p>20 hauling bond sales between the end of the news</p> <p>21 conference at 9:49 a.m. when the Department</p> <p>22 mistakenly posted Fisher's statement in its</p> |
| <p style="text-align: right;">Page 51</p> <p>1 used for any other kind of press conferences in</p> <p>2 October, 2001 at Treasury?</p> <p>3 MR. ROSSETTI: Objection.</p> <p>4 A. I don't recall right now. We again,</p> <p>5 all this embargo things are usually determined by</p> <p>6 the circumstances of the announcement or the</p> <p>7 release. So there are times when we're just</p> <p>8 giving data to reporters and we take it to the</p> <p>9 press room and set an informal embargo that's</p> <p>10 established when you get there, that's X minutes</p> <p>11 from when the paper is handed out. That's more</p> <p>12 like a lock-down process on a variety of data</p> <p>13 that's released.</p> <p>14 BY MR. THEODOROU:</p> <p>15 Q. Why were the procedures for the</p> <p>16 quarterly refunding announcement for the embargo</p> <p>17 that day different than securities auctions?</p> <p>18 MR. ROSSETTI: Objection. Nick, you're</p> <p>19 assuming that what is printed in the media is</p> <p>20 accurate. I think your questions are unfair at</p> <p>21 this point.</p> <p>22 MR. THEODOROU: Well, I don't think so.</p> | <p style="text-align: right;">Page 53</p> <p>1 website.</p> <p>2 At that point, some news organizations felt</p> <p>3 free to release the information." Then it says,</p> <p>4 "Michele Davis, the Department's assistant</p> <p>5 secretary of public affairs said the early posting</p> <p>6 was a human error in her office. It was a</p> <p>7 careless mistake." Right?</p> <p>8 A. Right.</p> <p>9 Q. Would you, please, describe for me how</p> <p>10 it was a mistake?</p> <p>11 MR. ROSSETTI: Objection.</p> <p>12 A. It was supposed to be posted at</p> <p>13 10 o'clock.</p> <p>14 BY MR. THEODOROU:</p> <p>15 Q. And what happened?</p> <p>16 A. The person who posted it on the</p> <p>17 website posted it early.</p> <p>18 Q. Do you know any other details about</p> <p>19 that as to why she posted it early?</p> <p>20 A. No.</p> <p>21 Q. Go back to use of embargoes at</p> <p>22 quarterly refunding press conferences, you said</p>  |

14 (Pages 50 to 53)

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| Page 54   | Page 56   |
|---|---|
| <p>1 that the embargo time would be set at the time of</p> <p>2 the conference?</p> <p>3 A. I said that in a general. I wasn't</p> <p>4 speaking just about quarterly refunding?</p> <p>5 Q. But do you recall how they were set at</p> <p>6 quarterly refunding conferences specifically in</p> <p>7 October, 2001?</p> <p>8 A. No.</p> <p>9 Q. How did Treasury enforce embargoes at</p> <p>10 press conference?</p> <p>11 MR. FREEBORNE: What do you mean by</p> <p>12 enforce?</p> <p>13 BY MR. THEODOROU:</p> <p>14 Q. Well, let me strike that. What would</p> <p>15 happen to someone if they violated the embargo?</p> <p>16 A. To a reporter?</p> <p>17 Q. Yes.</p> <p>18 A. Again, it would depends on the</p> <p>19 circumstances. But they're, usually an embargo is</p> <p>20 a fairly self-enforcing thing because the wire</p> <p>21 reporters, they all want to go to print, hit the</p> <p>22 wire at the same time so that nobody is last</p>   | <p>1 A. No. I'm not aware of that. No.</p> <p>2 BY MR. THEODOROU:</p> <p>3 Q. Was it the practice at Treasury to</p> <p>4 obtain some type of signed agreement from</p> <p>5 reporters that they would not disclose any</p> <p>6 information before the embargo time expired?</p> <p>7 MR. ROSSETTI: Objection.</p> <p>8 A. No.</p> <p>9 BY MR. THEODOROU:</p> <p>10 Q. Do you know who Elizabeth Holahan?</p> <p>11 A. Yes.</p> <p>12 Q. Who is she?</p> <p>13 A. She worked for me.</p> <p>14 Q. What was her position?</p> <p>15 A. Public affairs specialist.</p> <p>16 Q. Do you know if she had anything to do</p> <p>17 with the quarterly refunding announcement press</p> <p>18 conference on October 31st, 2001?</p> <p>19 A. Yes. She was part of getting it set</p> <p>20 up and getting the materials ready and released.</p> <p>21 Q. Do you know whether she asked those</p> <p>22 who attended the press conference to agree to</p>   |
| Page 55   | Page 57   |
| <p>1 because they think that's bad blood.</p> <p>2 So you rarely run into a problem. When it</p> <p>3 does happen, it can range from, depending on the</p> <p>4 seriousness of it, it can range from sort of a</p> <p>5 slap on the wrist to losing your Treasury press</p> <p>6 pass depending how serious it is.</p> <p>7 Q. So if a reporter from a wire service</p> <p>8 disclosed the news of the suspension of a 30-year</p> <p>9 bond before that 10 a.m. on October 31st, 2001,</p> <p>10 that reporter could face a penalty, correct?</p> <p>11 MR. ROSSETTI: Objection.</p> <p>12 A. Could. Yes.</p> <p>13 BY MR. THEODOROU:</p> <p>14 Q. And as you said, it could range from a</p> <p>15 slap on the wrist to having the press credentials</p> <p>16 revoked, correct?</p> <p>17 A. Right.</p> <p>18 Q. Was it the practice at Treasury to</p> <p>19 tell reporters about penalties for violating</p> <p>20 embargoes?</p> <p>21 A. Not that I'm aware of. No.</p> <p>22 MR. ROSSETTI: I'm sorry.</p> | <p>1 comply with a 10 a.m. embargo time?</p> <p>2 A. I wasn't there.</p> <p>3 Q. Did she ever tell you what she did at</p> <p>4 the press conference?</p> <p>5 A. I'm sure she did but I don't remember</p> <p>6 that --</p> <p>7 Q. No. I'm just asking, that wasn't my</p> <p>8 question. My question was: Did she ever tell you</p> <p>9 what she did at the press conference?</p> <p>10 MR. ROSSETTI: Objection.</p> <p>11 A. We had many discussions after that</p> <p>12 day. So I'm sure she did but that's all I know.</p> <p>13 BY MR. THEODOROU:</p> <p>14 Q. So is it your testimony you don't</p> <p>15 recall how she set the embargo time with the press</p> <p>16 that day?</p> <p>17 A. Right.</p> <p>18 MR. ROSSETTI: Objection.</p> <p>19 BY MR. THEODOROU:</p> <p>20 Q. Did you ever learn that those</p> <p>21 attending the October 31st, 2001 press conference</p> <p>22 were essentially asked to abide by an honor system</p> |

15 (Pages 54 to 57)

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|---|--|
| <p style="text-align: right;">Page 58</p> <p>1 not to release the information before the embargo<br/>2 time?<br/>3 MR. ROSSETTI: Objection.<br/>4 A. I'm sorry. They were asked that in<br/>5 the room?<br/>6 BY MR. THEODOROU:<br/>7 Q. Yeah. Did you ever learn that the way<br/>8 the embargo was implemented that day was that<br/>9 Ms. Holahan had basically called out those<br/>10 attending and asked them -- strike that. Did you<br/>11 ever learn that they were just basically pulled<br/>12 and they all decided on an embargo time?<br/>13 MR. ROSSETTI: Objection.<br/>14 A. I wasn't there, and I don't remember<br/>15 discussion afterwards.<br/>16 BY MR. THEODOROU:<br/>17 Q. Now, before October, 2001, were you<br/>18 aware of any instance in which a reporter or<br/>19 someone else violated the embargo at a Treasury<br/>20 press conference?<br/>21 A. Not that I can recall. No.<br/>22 Q. Before October, 2001, do you recall</p> | <p style="text-align: right;">Page 60</p> <p>1 tears of range over a news leak that gave some<br/>2 dealers a head start in the biggest bond rally in<br/>3 history." Do you see that?<br/>4 A. Yes.<br/>5 Q. At the end of this where it quotes<br/>6 Pete Fisher saying, We cannot run this business if<br/>7 people think we're trying to time the market or<br/>8 outsmart the market, Fisher said in an interview<br/>9 with cable television network CNBC. Do you see<br/>10 that?<br/>11 A. Yes.<br/>12 Q. Now, right under that there's a<br/>13 paragraph that says, "But those remarks rank<br/>14 haulover traders who had best saw hand handed<br/>15 handling of the announcement and at worst,<br/>16 suspected insider trading by market players who<br/>17 sit on a Treasury borrowing advisory committee.<br/>18 Barclay's Roberts recalled a similar flaque<br/>19 earlier this month when the Treasury decided to<br/>20 flood the market with more of the 10-year notes to<br/>21 ease a liquidity log jam caused by failed trades<br/>22 after the September 11 attacks on Washington and</p> |
| <p style="text-align: right;">Page 59</p> <p>1 any instance in which the credentials of any<br/>2 member of the press were revoked for violating a<br/>3 Treasury embargo?<br/>4 A. No.<br/>5 MR. THEODOROU: I'm going to show you<br/>6 the next exhibit.<br/>7 (Deposition Exhibit No. 4 was marked for<br/>8 identification.)<br/>9 BY MR. THEODOROU:<br/>10 Q. Do you have Exhibit 4 in front of you,<br/>11 Ms. Davis?<br/>12 A. Yes.<br/>13 Q. This is a Reuters report, October<br/>14 31st, 2001. Do you see that?<br/>15 A. Yes.<br/>16 Q. Have you ever seen this report before?<br/>17 A. I probably saw it then but I don't<br/>18 recall.<br/>19 Q. Well, the report starts off by saying<br/>20 if the Reuters report, "If Wall Street shed any<br/>21 tears over the U.S. Treasury's decision to send<br/>22 the 30-year bond to an early grave, there were</p>  | <p style="text-align: right;">Page 61</p> <p>1 New York.<br/>2 When they did the reopening of the 10-year,<br/>3 there was advance information on street, there's<br/>4 advance information here and so there are a number<br/>5 of people on the street who are pretty upset about<br/>6 it, Roberts said." Do you see that?<br/>7 A. Yes.<br/>8 Q. Were you aware in October, 2001 about<br/>9 an instance in which advance information got out<br/>10 before treasury's issuance of 10-year notes?<br/>11 MR. ROSSETTI: Objection.<br/>12 A. No.<br/>13 BY MR. THEODOROU:<br/>14 Q. Do you recall that incident that<br/>15 they're talking about at all?<br/>16 A. No.<br/>17 Q. Is it that you don't recall at all?<br/>18 You don't recall at all anyone bringing that to<br/>19 your attention?<br/>20 A. Right.<br/>21 Q. Is this the first time you've heard<br/>22 about this incident when I have asked you about</p>   |

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|--|---|
| <p>1 it?</p> <p>2 A. One of the E-mails I saw earlier today</p> <p>3 was an E-mail where someone, it was either that</p> <p>4 day or right after, where someone had said this</p> <p>5 had happened earlier. I think my response on that</p> <p>6 E-mail was I didn't know about this, did you, so I</p> <p>7 didn't know about it.</p> <p>8 Q. So before -- but did you learn about</p> <p>9 it some time after the October 31st, incident?</p> <p>10 A. Yes. Based on an E-mail I looked at</p> <p>11 earlier today.</p> <p>12 Q. But before October 31st, you weren't</p> <p>13 aware of this incident?</p> <p>14 A. Right.</p> <p>15 Q. Now, after October 31st, 2001, was</p> <p>16 this incident referred to in the Reuters report?</p> <p>17 Was it investigated?</p> <p>18 MR. ROSSETTI: Objection.</p> <p>19 MR. FREEBORNE: If you know.</p> <p>20 A. I don't know.</p> <p>21 BY MR. THEODOROU:</p> <p>22 Q. I can preface. Do you know whether</p> | <p>1 A. No.</p> <p>2 Q. Let's take a look at it from the</p> <p>3 bottom. Do you see it's from Tony Fratto?</p> <p>4 A. Yes.</p> <p>5 Q. To a series of people, correct.</p> <p>6 A. Yes.</p> <p>7 Q. One of those people is you?</p> <p>8 A. Yes.</p> <p>9 Q. And it's dated October 31st, 2001?</p> <p>10 A. Yes.</p> <p>11 Q. That's the day of the refunding</p> <p>12 conference at issue in this case?</p> <p>13 A. Right.</p> <p>14 Q. Then it goes from, and who was Tony</p> <p>15 Fratto at that time?</p> <p>16 A. Director of public affairs.</p> <p>17 Q. And he reported to who?</p> <p>18 A. Me.</p> <p>19 Q. Mr. Fratto reported to you, correct?</p> <p>20 A. Yes.</p> <p>21 Q. Did Ms. Holahan report to you also?</p> <p>22 A. She reported to him.</p>  |
| Page 63  | Page 65   |
| <p>1 the incident -- we can do that, if you want to do</p> <p>2 that. Do you know whether that incident was</p> <p>3 investigated?</p> <p>4 A. No. I don't know.</p> <p>5 Q. You don't know or you don't recall?</p> <p>6 A. I don't know.</p> <p>7 MR. THEODOROU: Why don't we take a</p> <p>8 break.</p> <p>9 THE VIDEO OPERATOR: Off the record at</p> <p>10 1:54:45.</p> <p>11 On the record at 2:03:44.</p> <p>12 BY MR. THEODOROU:</p> <p>13 Q. Ms. Davis, I want to show you what's</p> <p>14 been marked as Northern Exhibit 5. Do you see</p> <p>15 that?</p> <p>16 A. Yes.</p> <p>17 (Deposition Exhibit No. 5 was marked for</p> <p>18 identification.)</p> <p>19 BY MR. THEODOROU:</p> <p>20 Q. It's a series of e-mails, correct?</p> <p>21 A. Yes.</p> <p>22 Q. Have you seen it before today?</p>   | <p>1 Q. Now, if you follow this, the next</p> <p>2 E-mail is from David Aufhauser?</p> <p>3 A. Aufhauser.</p> <p>4 Q. Who is David Aufhauser?</p> <p>5 A. General counsel.</p> <p>6 Q. Of the Department of Treasury?</p> <p>7 A. Yes.</p> <p>8 Q. And he's writing to a series of people</p> <p>9 including you, right?</p> <p>10 A. Yes.</p> <p>11 Q. Then the next E-mail is from Timothy</p> <p>12 Bitsberger. Do you see that at 3:19 p.m.?</p> <p>13 A. Yes.</p> <p>14 Q. Who is Timothy Bitsberger?</p> <p>15 A. One of Peter Fisher's deputies. I</p> <p>16 don't remember his exact title. Deputy assistant</p> <p>17 secretary for something.</p> <p>18 Q. Now, he sends an E-mail to</p> <p>19 Mr. Aufhauser, Tony Fratto and you, correct?</p> <p>20 A. Yes.</p> <p>21 Q. As well as others?</p> <p>22 A. Mm-hmm.</p> |

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|--|---|
| <p>1 Q. And Mr. Fratto again worked under your<br/>2 supervision?<br/>3 A. Yes.<br/>4 Q. And then he says in his E-mail to<br/>5 Mr. Bitsberger, "There was a leak a few weeks ago<br/>6 at the emergency reopening. The refunding process<br/>7 has been criticized for years because of suspected<br/>8 leaks." Do you see that?<br/>9 A. Yes.<br/>10 Q. Did you ever discussion that issue<br/>11 with Mr. Bitsberger?<br/>12 MR. ROSSETTI: Objection.<br/>13 A. Not that I recall.<br/>14 BY MR. THEODOROU:<br/>15 Q. When he's talking about a leak a few<br/>16 weeks ago in the emergency reopening, what is the<br/>17 emergency reopening that he's referring to, if you<br/>18 know?<br/>19 MR. ROSSETTI: Objection.<br/>20 A. We did a lot of things right after<br/>21 September 11th to get liquidity into markets one<br/>22 of which I think was reopening some of the 10-year</p>  | <p>1 BY MR. THEODOROU:<br/>2 Q. Have you ever heard it used,<br/>3 reopening?<br/>4 A. Yes.<br/>5 Q. What does it mean customarily at<br/>6 Treasury when they say a reopening of something?<br/>7 MR. ROSSETTI: Objection.<br/>8 A. Sell more of them.<br/>9 BY MR. THEODOROU:<br/>10 Q. So when they say emergency reopening,<br/>11 you believe that he could be referring to the<br/>12 10-year reopening -- the reopening of the 10-year<br/>13 bond, correct.<br/>14 A. That's only one I do remember.<br/>15 Q. So you do you recall there was a<br/>16 reopening of the 10-year bond, right?<br/>17 A. Yes.<br/>18 MR. FREEBORNE: Just make sure he<br/>19 finishes the question.<br/>20 BY MR. THEODOROU:<br/>21 Q. So you don't recall there was a<br/>22 reopening of the 10-year bond, correct?</p>     |
| Page 67  | Page 69   |
| <p>1 bond issues.<br/>2 Q. So it's the 10-year bond issue that I<br/>3 just talked about?<br/>4 A. Could have been.<br/>5 Q. Well, let's just clear the record for<br/>6 a second. He talks about an emergency reopening.<br/>7 Do you know what he's talking about when he says<br/>8 emergency reopening?<br/>9 A. Like I said, I think that was the<br/>10 10-year reopening issue but that was a while ago.<br/>11 I don't remember all the things we did back then.<br/>12 Q. So you believe he may have been<br/>13 referring to the reopening of that 10-year bond?<br/>14 A. Yes. That could be.<br/>15 Q. What does reopening mean?<br/>16 MR. FREEBORNE: In the E-mail? I mean,<br/>17 she didn't write the E-mail.<br/>18 Q. What does reopening mean in the --<br/>19 A. I'm not --<br/>20 Q. Was the term reopening used at<br/>21 Treasury ever?<br/>22 MR. ROSSETTI: Objection.</p> | <p>1 A. Yes.<br/>2 Q. And he says in his E-mail,<br/>3 Mr. Bitsberger, that there was a leak a few weeks<br/>4 ago at the emergency reopening. And that he was<br/>5 referring to the reopening of the 10-year bond,<br/>6 correct?<br/>7 MR. ROSSETTI: Objection.<br/>8 MR. THEODOROU: You have to answer.<br/>9 A. Probably.<br/>10 BY MR. THEODOROU:<br/>11 Q. So he probably was referring to the<br/>12 emergency reopening of the 10-year bond, correct?<br/>13 MR. ROSSETTI: Objection.<br/>14 A. Yes.<br/>15 BY MR. THEODOROU:<br/>16 Q. Now, do you know or does this refresh<br/>17 your recollection as to whether that leak<br/>18 concerning the emergency reopening of the 10-year<br/>19 bond was investigated?<br/>20 MR. ROSSETTI: Objection.<br/>21 A. I don't know.<br/>22 BY MR. THEODOROU:</p> |

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|---|--|
| <p>1 Q. Now, the next E-mail is from Mr.<br/>2 Fratto. Do you see that?<br/>3 A. Yes.<br/>4 Q. And it's from Mr. Fratto to<br/>5 Mr. Bitsberger, Michele Davis, that's you,<br/>6 correct?<br/>7 A. Yes.<br/>8 Q. And a fellow named Paul Malvey. Who<br/>9 is Paul Malvey?<br/>10 A. I believe he was --<br/>11 Q. Do you know who Paul Malvey was?<br/>12 A. Yes.<br/>13 MR. ROSSETTI: I was going to object to<br/>14 that. I think it would be only fair, those<br/>15 weren't the only recipients just to make it clear.<br/>16 MR. THEODOROU: I know that. The<br/>17 document speaks for itself. I'm trying to move<br/>18 this so we can move. She's got to go back to the<br/>19 workings of government here.<br/>20 BY MR. THEODOROU:<br/>21 Q. Do you know who Paul Malvey was at the<br/>22 time?</p> | <p>1 Q. That's his answer. Now, what was the<br/>2 borrowing committee, the Treasury borrowing<br/>3 committee?<br/>4 MR. ROSSETTI: Objection.<br/>5 A. It's a private sector group that makes<br/>6 recommendations to the Treasury every quarter.<br/>7 BY MR. THEODOROU:<br/>8 Q. So it's a private sector group?<br/>9 A. Yes.<br/>10 Q. How many members does it have?<br/>11 A. I don't know.<br/>12 Q. Does it have more than five, to your<br/>13 knowledge. Do you know?<br/>14 A. I don't know the numbers.<br/>15 Q. You say that it is composed of<br/>16 individuals from the private sector?<br/>17 A. Yes.<br/>18 Q. Do you know who were the individuals<br/>19 who were members of the Treasury in October, 2001?<br/>20 A. No.<br/>21 Q. Did these individuals who you say<br/>22 worked on the private sector, did they work for</p>                                  |
| Page 71   | Page 73  |
| <p>1 A. Yes.<br/>2 Q. Who was he?<br/>3 A. He worked for Tim Bitsberger.<br/>4 Q. Now, you see where Mr. Fratto says,<br/>5 writes, "There was a leak during emergency<br/>6 reopening?"<br/>7 A. Yes. I see that.<br/>8 MR. ROSSETTI: Question mark.<br/>9 A. Question mark.<br/>10 MR. THEODOROU: I was going to say<br/>11 question mark but thought you would understand by<br/>12 the tone of my voice that it was a question.<br/>13 MR. ROSSETTI: Well, we don't get the<br/>14 tone of your voice on the record.<br/>15 BY MR. THEODOROU:<br/>16 Q. Well, there was a leak during the<br/>17 emergency reopening. Do you see that?<br/>18 A. Yes.<br/>19 Q. Mr. Bitsberger responds, yes,<br/>20 attributed to borrowing committee. Do you see<br/>21 that?<br/>22 A. Yes.</p>                            | <p>1 financial institutions?<br/>2 MR. ROSSETTI: Objection.<br/>3 A. I don't know who they were. They have<br/>4 some connection to the bond market but I don't<br/>5 know the names of people. I don't know their<br/>6 names or what they worked in.<br/>7 BY MR. THEODOROU:<br/>8 Q. So was your understanding that they<br/>9 had connections to the bond or financial markets,<br/>10 correct?<br/>11 A. Yes.<br/>12 Q. Do you know whether any of them worked<br/>13 for companies who traded in bonds or<br/>14 Treasury-issued securities?<br/>15 A. I don't know.<br/>16 Q. Did you ever learn at any time whether<br/>17 the Treasury took any actions about this alleged<br/>18 leak from the borrowing committee that took place<br/>19 before October, 2001?<br/>20 MR. ROSSETTI: Objection.<br/>21 MR. FREEBORNE: Objection. I didn't<br/>22 understand that question.</p> |

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| <p style="text-align: right;">Page 74</p> <p>1 BY MR. THEODOROU:</p> <p>2 Q. All right. I'll rephrase it. Did you</p> <p>3 ever learn whether Treasury investigated -- this</p> <p>4 is different than what I asked you before whether</p> <p>5 at that time it was investigated, but did you ever</p> <p>6 learn in your capacity as assistant secretary of</p> <p>7 public affairs, did you ever learn whether</p> <p>8 Treasury investigated a leak that was attributed</p> <p>9 to the borrowing committee that Mr. Bitsberger is</p> <p>10 talking about in this E-mail?</p> <p>11 MR. ROSSETTI: Objection.</p> <p>12 MR. FREEBORNE: Objection.</p> <p>13 A. Not that I recall.</p> <p>14 BY MR. THEODOROU:</p> <p>15 Q. If Treasury had investigated the leak</p> <p>16 or leak from the borrowing committee as assistant</p> <p>17 secretary of public affairs, someone would have</p> <p>18 told you about that, correct?</p> <p>19 MR. ROSSETTI: Objection.</p> <p>20 A. Someone would have told me about an</p> <p>21 investigation?</p> <p>22 Q. Yes.</p> | <p style="text-align: right;">Page 76</p> <p>1 A. No.</p> <p>2 Q. So is it fair to say that you don't</p> <p>3 recall any investigations of those alleged</p> <p>4 suspected leaks?</p> <p>5 MR. ROSSETTI: Objection.</p> <p>6 A. I don't recall any.</p> <p>7 BY MR. THEODOROU:</p> <p>8 Q. As assistant secretary of public</p> <p>9 affairs in October of 2001, when Mr. Bitsberger</p> <p>10 said there was a leak during the emergency</p> <p>11 reopening attributed to the borrowing committee</p> <p>12 that's referred to this E-mail, correct?</p> <p>13 A. Yes.</p> <p>14 Q. Now, as assistant secretary of public</p> <p>15 affairs in 2001, weren't you curious about what</p> <p>16 Bitsberger was, about the leaks?</p> <p>17 MR. ROSSETTI: Objection.</p> <p>18 MR. FREEBORNE: You haven't established</p> <p>19 that she even recalls this E-mail, so that's an</p> <p>20 unfair question.</p> <p>21 BY MR. THEODOROU:</p> <p>22 Q. Do you recall this E-mail?</p> |
| <p style="text-align: right;">Page 75</p> <p>1 A. I don't know.</p> <p>2 BY MR. THEODOROU:</p> <p>3 Q. But you can't recall any investigation</p> <p>4 of that alleged incident?</p> <p>5 A. No.</p> <p>6 Q. Now, in this E-mail where</p> <p>7 Mr. Bitsberger, in the E-mail in the middle of</p> <p>8 this page where Mr. Bitsberger wrote there was a</p> <p>9 leak a few weeks ago at the emergency reopening,</p> <p>10 it also says the refunding process has been</p> <p>11 criticized for years because of suspected leaks.</p> <p>12 Do you see that?</p> <p>13 A. Yes.</p> <p>14 Q. When he talks about refunding process,</p> <p>15 he's referring to the quarterly refunding</p> <p>16 announcements, isn't he?</p> <p>17 MR. ROSSETTI: Objection.</p> <p>18 A. That would make sense.</p> <p>19 BY MR. THEODOROU:</p> <p>20 Q. Did anybody ever talk to you about</p> <p>21 these alleged suspected leaks associated with</p> <p>22 refunding conferences?</p>  | <p style="text-align: right;">Page 77</p> <p>1 A. No.</p> <p>2 Q. Do you recall the subject matter in</p> <p>3 this E-mail?</p> <p>4 A. No.</p> <p>5 Q. So you don't recall Mr. Bitsberger</p> <p>6 raising this issue about leaks coming from the</p> <p>7 borrowing committee?</p> <p>8 A. No.</p> <p>9 Q. Do you have any reason to believe that</p> <p>10 you didn't get this E-mail at the time?</p> <p>11 A. Yes. I'm not at the top where he</p> <p>12 makes that comment.</p> <p>13 Q. Let's forget about the top, but the</p> <p>14 middle one, there was a leak weeks ago at the</p> <p>15 emergency reopening. Do you see that?</p> <p>16 A. Yes, I'm on it. I'm sure I got it,</p> <p>17 the one I'm on.</p> <p>18 Q. Right. "And the refunding process has</p> <p>19 been criticized for years because of suspected</p> <p>20 leaks." Right? Correct?</p> <p>21 A. Uh-huh.</p> <p>22 Q. Then it goes on to talk about there</p>  |

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| <p>1 was a leak during the emergency reopening. You<br/>2 got that E-mail, right?<br/>3 A. Yes.<br/>4 Q. And then Mr. Bitsberger says to Mr.<br/>5 Fratto, "Yes. Attributed to the borrowing<br/>6 committee."<br/>7 MR. FREEBORNE: And she's not on that.<br/>8 MR. THEODOROU: And you were not on<br/>9 that. Because I don't want to be unfair about it.<br/>10 You're not on that, that's right. Now, do you<br/>11 recall anybody talking to you, I just want to get<br/>12 it clear, do you recall anybody talking to you<br/>13 about the leak coming from the borrowing<br/>14 committee.<br/>15 MR. ROSSETTI: Objection.<br/>16 A. No, I don't recall that.<br/>17 BY MR. THEODOROU:<br/>18 Q. And it's also fair to say again that<br/>19 you don't recall any investigation being done<br/>20 about the leak coming from the borrowing<br/>21 committee; is that right?<br/>22 MR. ROSSETTI: Objection.</p>   | <p>1 BY MR. THEODOROU:<br/>2 Q. Do you know whether inspector<br/>3 general's office or anybody else followed up on<br/>4 the allegation of suspected leaks in the refunding<br/>5 process?<br/>6 MR. ROSSETTI: Objection.<br/>7 A. I don't know.<br/>8 BY MR. THEODOROU:<br/>9 Q. Were you concerned about what he said<br/>10 in this -- well, you don't recall the E-mail,<br/>11 correct?<br/>12 A. I'm sure I got it. I don't recall it<br/>13 now.<br/>14 MR. THEODOROU: Let's go to the next<br/>15 document.<br/>16 (Deposition Exhibit No. 6 was marked for<br/>17 identification.)<br/>18 BY MR. THEODOROU:<br/>19 Q. What I want to show you is Nothern<br/>20 Exhibit 6. Do you have that in front you?<br/>21 A. Yes.<br/>22 Q. This is a Bloomberg report entitled</p>   |
| Page 79  | Page 81  |
| <p>1 A. That's right.<br/>2 BY MR. THEODOROU:<br/>3 Q. Did you follow up after getting this<br/>4 E-mail about suspected leaks related to the<br/>5 refunding process. Did you follow up with Mr.<br/>6 Bitsberger or anybody else about the suspected<br/>7 leaks that he's talking about in that E-mail that<br/>8 you did get?<br/>9 MR. ROSSETTI: Objection.<br/>10 A. There were lots of meetings after this<br/>11 October 31st that were how what happened and it<br/>12 was, I don't even remember if it was the IG or<br/>13 somebody but someone looked into it and that sort<br/>14 of meant let them do what they're going to do<br/>15 rather than have us all talking to each other.<br/>16 BY MR. THEODOROU:<br/>17 Q. Do you know whether the IG followed up<br/>18 on Mr. Bitsberger's statement that the refunding<br/>19 process has been criticized for years because of<br/>20 suspected leaks?<br/>21 MR. ROSSETTI: Objection.<br/>22 A. I have no idea.</p> | <p>1 U.S. Treasury leaks decision to end 30-year bond<br/>2 on website. Do you see that?<br/>3 A. Yes.<br/>4 Q. Now, 6 paragraphs down, there's a<br/>5 paragraph that begins, "Treasury officials<br/>6 declined to comment on the early release other<br/>7 than to confirm it occurred. It was the second<br/>8 time the department has posted embargoed<br/>9 information on the website before it was scheduled<br/>10 to enter the public domain." Do you see that<br/>11 paragraph?<br/>12 A. Yes.<br/>13 Q. It says, "On October 22nd, the<br/>14 Treasury posted remarks by deputy Treasury<br/>15 secretary Kenneth Dam almost an hour before he<br/>16 spoke about the government's efforts to curve<br/>17 terrorist financing." Do you see that?<br/>18 A. Yes.<br/>19 Q. Do you recall that incident on October<br/>20 22nd in which remarks by Kenneth Dam were posted<br/>21 on Treasury's website an hour before his remarks?<br/>22 MR. ROSSETTI: Objection.</p> |

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|---|---|
| <p>1 A. No.</p> <p>2 BY MR. THEODOROU:</p> <p>3 Q. Did you have any involvement in</p> <p>4 coordinating Secretary Dam's press conference that</p> <p>5 day?</p> <p>6 A. I don't know that it was a press</p> <p>7 conference but no.</p> <p>8 Q. Do you know whether his remarks were</p> <p>9 subject to an embargo?</p> <p>10 A. No. I really don't.</p> <p>11 Q. Do you know if an investigation was</p> <p>12 conducted into this incident?</p> <p>13 MR. ROSSETTI: Objection.</p> <p>14 A. I have no idea.</p> <p>15 BY MR. THEODOROU:</p> <p>16 Q. Did anybody on or about October 31st</p> <p>17 or shortly thereafter talk about the October 22nd</p> <p>18 press conference and the early release of</p> <p>19 secretary Dam's remarks to you?</p> <p>20 MR. ROSSETTI: Objection.</p> <p>21 A. Not that I recall.</p> <p>22 BY MR. THEODOROU:</p>   | <p>1 Q. Do you know where you met?</p> <p>2 A. No.</p> <p>3 Q. Do you know if anybody else was</p> <p>4 present?</p> <p>5 A. I don't remember.</p> <p>6 Q. So you don't recall Tony Fratto being</p> <p>7 there or Elizabeth Holahan?</p> <p>8 A. They were definitely involved in</p> <p>9 getting ready for the press conference but I don't</p> <p>10 recall a specific meeting and who was there.</p> <p>11 Q. Do you recall where you met with</p> <p>12 Secretary Fisher?</p> <p>13 MR. ROSSETTI: Objection.</p> <p>14 MR. THEODOROU: She said probably.</p> <p>15 MR. ROSSETTI: Probably not, I mean,</p> <p>16 let's establish that she did.</p> <p>17 BY MR. THEODOROU:</p> <p>18 Q. Do you recall where you met?</p> <p>19 A. No, I don't.</p> <p>20 Q. When you met with Secretary Fisher</p> <p>21 about issues, was there a particular place you</p> <p>22 usually met with him?</p>   |
| Page 83   | Page 85   |
| <p>1 Q. When did you first learn about the</p> <p>2 decision to suspend the 30-year bond?</p> <p>3 A. A couple of days in advance and that's</p> <p>4 my best recollection. I don't have more specific.</p> <p>5 Q. How did you learn it?</p> <p>6 A. I don't remember.</p> <p>7 Q. When did you first learn when under</p> <p>8 Secretary Fisher was going to deliver his remarks</p> <p>9 as a refunding conference?</p> <p>10 A. I'm not --</p> <p>11 Q. Well, there's a difference. My first</p> <p>12 question was when did you first learn that they</p> <p>13 were going to suspend the 30-year bond and when</p> <p>14 did you learn that Secretary Fisher was going to</p> <p>15 deliver remarks at the refunding conference?</p> <p>16 A. I don't know. I don't remember. I</p> <p>17 mean.</p> <p>18 Q. Were both -- was it approximately --</p> <p>19 A. It could have been the same. Yes.</p> <p>20 Q. Did you meet with Secretary Fisher to</p> <p>21 discuss the procedures for the press conference?</p> <p>22 A. Probably.</p> | <p>1 A. No. He would come to my office, I</p> <p>2 would go to his office.</p> <p>3 Q. Do you recall discussing anything with</p> <p>4 him about the press conference?</p> <p>5 A. Nothing in particular.</p> <p>6 Q. So is it fair to say you don't recall</p> <p>7 discussing anything about an embargo?</p> <p>8 MR. ROSSETTI: Objection.</p> <p>9 A. I know we had conversations in getting</p> <p>10 ready for the press conference. I don't remember</p> <p>11 specific details of those conversations.</p> <p>12 BY MR. THEODOROU:</p> <p>13 Q. So you do recall having conversations</p> <p>14 with him about getting ready for the press</p> <p>15 conference, correct?</p> <p>16 A. Yes.</p> <p>17 Q. So is it fair to say that you don't</p> <p>18 recall discussing anything about an embargo with</p> <p>19 him?</p> <p>20 A. I don't recall any specifics of those</p> <p>21 conversations.</p> <p>22 Q. Do you recall anything at all about an</p> |

22 (Pages 82 to 85)

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| <p style="text-align: right;">Page 86</p> <p>1 embargo as opposed to specifics and let me</p> <p>2 rephrase that. Do you recall anything general</p> <p>3 about discussing embargoes?</p> <p>4 MR. ROSSETTI: Objection.</p> <p>5 A. Discussing an embargo would have been</p> <p>6 part of preparing for a press conference but I</p> <p>7 don't remember any specifics.</p> <p>8 BY MR. THEODOROU:</p> <p>9 Q. So you don't recall any specific</p> <p>10 conversations with him about the embargo</p> <p>11 procedures for that conference?</p> <p>12 A. I don't recall them. No.</p> <p>13 Q. Who made the decision that the</p> <p>14 information released at the October 31st, 2001</p> <p>15 press conference should be subject to a 10 a.m.</p> <p>16 embargo time?</p> <p>17 MR. ROSSETTI: Objection.</p> <p>18 A. It would have been a collective</p> <p>19 decision as they planned the event?</p> <p>20 BY MR. THEODOROU:</p> <p>21 Q. Do you know whether it was a</p> <p>22 collective decision that day to set the 10 a.m.</p>                             | <p style="text-align: right;">Page 88</p> <p>1 you recall anything at all?</p> <p>2 A. No.</p> <p>3 Q. Do you recall the discussions</p> <p>4 concerning the -- do you recall any discussions</p> <p>5 concerning the embargo?</p> <p>6 A. No.</p> <p>7 MR. FREEBORNE: This is before</p> <p>8 October 31?</p> <p>9 BY MR. THEODOROU:</p> <p>10 Q. Before the October 31 quarterly</p> <p>11 refunding conference, do you recall any</p> <p>12 discussions about setting the embargo for that</p> <p>13 day?</p> <p>14 A. No.</p> <p>15 Q. Do you recall Peter Fisher proposing</p> <p>16 that his announcement -- do you recall Peter</p> <p>17 Fisher's telling you that he did not want to have</p> <p>18 an embargo that day but wanted to simply -- do you</p> <p>19 recall Peter Fisher telling you that he did not</p> <p>20 want to have an embargo that day?</p> <p>21 MR. ROSSETTI: Objection.</p> <p>22 A. No.</p>                                      |
| <p style="text-align: right;">Page 87</p> <p>1 embargo time?</p> <p>2 A. I'm sure we decided it before that</p> <p>3 day. I don't know what you mean do I know it was</p> <p>4 a collective decision, I'm not sure I don't.</p> <p>5 Q. Well, when you say I am sure we</p> <p>6 decided before that day, who is we?</p> <p>7 A. It would have been Peter Fisher and</p> <p>8 his team and my team of people working on and</p> <p>9 whoever else was involved in the announcement.</p> <p>10 Q. And who on Peter Fisher's team would</p> <p>11 have been involved?</p> <p>12 A. I'm sure I'll leave somebody out but</p> <p>13 Brian Roseboro, Tim Bitsberger and other staff</p> <p>14 that I'm just not remembering.</p> <p>15 Q. And who on your team would have been</p> <p>16 involved?</p> <p>17 A. Tony Fratto and Betsy Holahan.</p> <p>18 Q. Do you recall any discussions about</p> <p>19 saying the embargo time for that quarterly</p> <p>20 refunding conference?</p> <p>21 A. Not specifically, no.</p> <p>22 Q. Well, as opposed to specifically, do</p> | <p style="text-align: right;">Page 89</p> <p>1 BY MR. THEODOROU:</p> <p>2 Q. So is it fair to say that you don't</p> <p>3 recall objecting to his idea that there should not</p> <p>4 be an embargo that day?</p> <p>5 MR. ROSSETTI: Objection.</p> <p>6 A. I don't recall that.</p> <p>7 BY MR. THEODOROU:</p> <p>8 Q. And you don't recall Tony Fratto</p> <p>9 objecting to Pete Fisher's plan to not have an</p> <p>10 embargo?</p> <p>11 MR. ROSSETTI: Objection.</p> <p>12 A. I don't recall.</p> <p>13 MR. THEODOROU: Why don't we change the</p> <p>14 tape.</p> <p>15 THE VIDEO OPERATOR: This concludes</p> <p>16 tape 1 in the deposition of Michele Davis. Off</p> <p>17 the record at 2:28:52 p.m.</p> <p>18 This begins tape 2 in the deposition of</p> <p>19 Michele Davis. On the record at 2:31:33.</p> <p>20 BY MR. THEODOROU:</p> <p>21 Q. As of, Ms. Davis, as of October 31st,</p> <p>22 2001, who were allowed, excuse me. Let me strike</p> |

23 (Pages 86 to 89)

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|---|--|
| <p style="text-align: right;">Page 90</p> <p>1 that. As of October 31st, 2001, who was allowed</p> <p>2 to attend quarterly refunding press conferences?</p> <p>3 MR. FREEBORNE: From the outside?</p> <p>4 MR. THEODOROU: Yes.</p> <p>5 A. It was supposed to be for media.</p> <p>6 BY MR. THEODOROU:</p> <p>7 Q. So reporters could attend, correct?</p> <p>8 A. Yes.</p> <p>9 Q. But those reporters had to be</p> <p>10 credentialed by the Department of Treasury to</p> <p>11 attend?</p> <p>12 A. No.</p> <p>13 MR. ROSSETTI: Objection.</p> <p>14 A. No. They had to either have the</p> <p>15 Treasury press pass or call to be cleared in.</p> <p>16 BY MR. THEODOROU:</p> <p>17 Q. Treasury employees could attend the</p> <p>18 quarterly refunding press conferences?</p> <p>19 A. I believe so. Yes.</p> <p>20 Q. Was there a particular group of</p> <p>21 Treasury employees who could attend or any</p> <p>22 Treasury employees?</p> | <p style="text-align: right;">Page 92</p> <p>1 conference?</p> <p>2 MR. ROSSETTI: Objection.</p> <p>3 A. I mean, obviously they were physically</p> <p>4 able to because it happened but it was not the way</p> <p>5 it was supposed to work.</p> <p>6 BY MR. THEODOROU:</p> <p>7 Q. Right. But when you say it was not</p> <p>8 the way it was up supposed to work, under the</p> <p>9 practice at Treasury, only reporters and</p> <p>10 Government employees could attend, correct?</p> <p>11 A. Treasury employees.</p> <p>12 Q. Treasury employees could attend?</p> <p>13 A. Correct.</p> <p>14 Q. Was there any type of written</p> <p>15 procedure regarding who could attend and who could</p> <p>16 not attend?</p> <p>17 A. Not that I'm aware of. No.</p> <p>18 Q. So when you say that reporters and</p> <p>19 Treasury employees could attend, you're talking</p> <p>20 about the practice?</p> <p>21 A. Right. Right.</p> <p>22 Q. Correct.</p> |
| <p style="text-align: right;">Page 91</p> <p>1 A. I don't recall there being any rule</p> <p>2 about that.</p> <p>3 Q. Could other Government employees</p> <p>4 attend?</p> <p>5 MR. ROSSETTI: Are you saying outside</p> <p>6 of Treasury?</p> <p>7 MR. THEODOROU: Outside of Treasury?</p> <p>8 A. No.</p> <p>9 BY MR. THEODOROU:</p> <p>10 Q. What about nonreporters who were not</p> <p>11 Treasury Department employees, could they attend,</p> <p>12 other people?</p> <p>13 A. It was the event was meant for the</p> <p>14 media only.</p> <p>15 Q. But my question is I guess you did</p> <p>16 answer it in a way, but my question is could</p> <p>17 nonreporters who were nonGovernment employees</p> <p>18 attend quarterly refunding press conferences?</p> <p>19 A. That's not the way it was supposed to</p> <p>20 work.</p> <p>21 Q. So is it your testimony that a private</p> <p>22 business consultant could not attend the</p>   | <p style="text-align: right;">Page 93</p> <p>1 A. Exactly.</p> <p>2 Q. So it's your testimony that private</p> <p>3 business consultants should not have been allowed</p> <p>4 at a quarterly refunding conference, correct?</p> <p>5 MR. ROSSETTI: Objection.</p> <p>6 A. Yes.</p> <p>7 BY MR. THEODOROU:</p> <p>8 Q. As of October 31st?</p> <p>9 A. Right.</p> <p>10 Q. As of October 31st, 2001, do you know</p> <p>11 who at Treasury, as opposed to my question of who</p> <p>12 was responsible, do you know who at Treasury was</p> <p>13 responsible for deciding who could attend the</p> <p>14 press conferences?</p> <p>15 MR. ROSSETTI: Objection.</p> <p>16 A. No. Again, it would have been a</p> <p>17 discussion with Peter Fisher his staff and me and</p> <p>18 my staff.</p> <p>19 BY MR. THEODOROU:</p> <p>20 Q. So the Office of Public Affairs was</p> <p>21 involved in the decision as to who could attend,</p> <p>22 correct?</p>    |

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| Page 94   | Page 96  |
|---|--|
| <p>1 A. Yes.</p> <p>2 Q. And the Office of Market Finance was</p> <p>3 involved?</p> <p>4 A. The Office of Domestic Finance. Yes.</p> <p>5 Q. Domestic finance. Now, to your</p> <p>6 knowledge, during the time you've been at the</p> <p>7 Department of Treasury, do you know if Treasury</p> <p>8 has ever used written confidentiality agreements</p> <p>9 with people attending quarterly refunding</p> <p>10 conferences?</p> <p>11 A. Not that I'm aware of.</p> <p>12 Q. Do you know if it was the practice at</p> <p>13 Treasury as of October 31st, 2001 to ask or to ask</p> <p>14 reporters not to disclose anything or were</p> <p>15 reporters understood that they could not disclose</p> <p>16 information before the embargo press time?</p> <p>17 MR. ROSSETTI: Objection.</p> <p>18 A. An embargo is a standard practice in</p> <p>19 the across the media.</p> <p>20 BY MR. THEODOROU:</p> <p>21 Q. Was it the practice, though, of</p> <p>22 Treasury to require confidentiality agreements</p> | <p>1 BY MR. THEODOROU:</p> <p>2 Q. Is that a yes or no?</p> <p>3 A. Do I know --</p> <p>4 Q. Do you know how he was able to</p> <p>5 attend -- in other words, do you know how he was</p> <p>6 able to get into a press conference?</p> <p>7 A. I don't know how he got into the</p> <p>8 building. Once he was in the building, he just</p> <p>9 walked into the press conference.</p> <p>10 Q. He would have needed some credentials</p> <p>11 to get into the building, correct?</p> <p>12 MR. ROSSETTI: Objection.</p> <p>13 A. No. He would have needed to be</p> <p>14 cleared in but there's no and advance credentials.</p> <p>15 BY MR. THEODOROU:</p> <p>16 Q. Do you know who cleared him?</p> <p>17 A. No.</p> <p>18 Q. Do you know how it was that he was</p> <p>19 able to attend these conferences?</p> <p>20 A. I don't --</p> <p>21 Q. In other words, let me rephrase that.</p> <p>22 You know that he attended the conference, correct?</p> |
| Page 95   | Page 97  |
| <p>1 from reporters attending press conferences?</p> <p>2 A. No.</p> <p>3 MR. ROSSETTI: Objection.</p> <p>4 Q. No?</p> <p>5 A. No.</p> <p>6 BY MR. THEODOROU:</p> <p>7 Q. Did you know who Peter Davis was in</p> <p>8 October, 2001?</p> <p>9 A. No.</p> <p>10 Q. When did you -- did you ever learn who</p> <p>11 Peter Davis is?</p> <p>12 A. Just from these accounts.</p> <p>13 Q. And what did you learn?</p> <p>14 A. That he was --</p> <p>15 MR. ROSSETTI: Objection.</p> <p>16 A. That he was in the room and not a</p> <p>17 reporter.</p> <p>18 BY MR. THEODOROU:</p> <p>19 Q. And he was not a reporter, correct?</p> <p>20 So do you know how Davis was able to attend</p> <p>21 quarterly refunding press conferences?</p> <p>22 MR. ROSSETTI: Objection?</p>  | <p>1 A. Yes.</p> <p>2 Q. And you know that he was not a member</p> <p>3 of the press, correct? Is that a yes?</p> <p>4 A. Yes.</p> <p>5 Q. And you also know that he wasn't a</p> <p>6 Treasury Department employee?</p> <p>7 A. Right.</p> <p>8 Q. So under the practice you testified</p> <p>9 about, he should not have been at that press</p> <p>10 conference?</p> <p>11 MR. ROSSETTI: Objection.</p> <p>12 BY MR. THEODOROU:</p> <p>13 Q. Is that correct?</p> <p>14 A. That's correct.</p> <p>15 Q. Because you testified that the</p> <p>16 practice was only to have reporters and Treasury</p> <p>17 employees, correct?</p> <p>18 A. Yes.</p> <p>19 Q. So how was it that he got into that</p> <p>20 press conference?</p> <p>21 MR. FREEBORNE: If you know.</p> <p>22 MR. ROSSETTI: Objection.</p>   |

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| Page 98   | Page 100  |
|---|---|
| <p>1 A. I have no idea.</p> <p>2 BY MR. THEODOROU:</p> <p>3 Q. Did you ever learn how he got in?</p> <p>4 A. No. Because I don't know who cleared</p> <p>5 him into the building.</p> <p>6 Q. Well, given that the practice wasn't</p> <p>7 followed on October 31st, 2001, weren't you</p> <p>8 concerned as assistant secretary of public affairs</p> <p>9 that this consultant off the street got into one</p> <p>10 of these Treasury press conferences?</p> <p>11 A. Yes.</p> <p>12 Q. So did you make inquiry as to how this</p> <p>13 guy got in?</p> <p>14 A. Like I said, we had lots of meetings</p> <p>15 after that happened to talk, to figure out how it</p> <p>16 all happened and then whether, I don't remember if</p> <p>17 it was the IG or the general counsel's office but</p> <p>18 someone kind of took on the responsibility of</p> <p>19 investigating this and we left it to the people</p> <p>20 who were in charge of investigating it.</p> <p>21 Q. Did you ever learn how he got in?</p> <p>22 MR. ROSSETTI: Objection.</p> | <p>1 A. No.</p> <p>2 BY MR. THEODOROU:</p> <p>3 Q. Do you know who Lula Tyler is?</p> <p>4 A. No.</p> <p>5 Q. Do you know someone named Elnora</p> <p>6 Bowser?</p> <p>7 A. No.</p> <p>8 Q. Do you know Paul Malvey?</p> <p>9 A. Yes.</p> <p>10 Q. Who is Paul Malvey?</p> <p>11 A. He works somewhere in domestic</p> <p>12 finance. I think he worked for Tim Bitsberger.</p> <p>13 Q. Does he still work at Treasury?</p> <p>14 A. I don't think so.</p> <p>15 Q. And he worked for him?</p> <p>16 A. For Tim Bitsberger, I think.</p> <p>17 Q. In what area?</p> <p>18 A. Domestic finance.</p> <p>19 Q. Do you know what his position was?</p> <p>20 A. I don't recall the title.</p> <p>21 Q. Did he have the authority to clear</p> <p>22 persons at the press conference?</p>   |
| Page 99   | Page 101  |
| <p>1 A. Other than just walking through the</p> <p>2 door, no. I mean, that's all I know.</p> <p>3 BY MR. THEODOROU:</p> <p>4 Q. But your testimony is his attendance</p> <p>5 at this -- did you learn that he had been at other</p> <p>6 quarterly refunding press conferences besides the</p> <p>7 October 31st, 2001 conference?</p> <p>8 MR. ROSSETTI: Objection.</p> <p>9 A. Somewhere after the fact that I heard</p> <p>10 that from somewhere.</p> <p>11 BY MR. THEODOROU:</p> <p>12 Q. And his attendance at the conference</p> <p>13 was not consistent with Treasury policy, correct?</p> <p>14 MR. ROSSETTI: Objection.</p> <p>15 A. That's right.</p> <p>16 BY MR. THEODOROU:</p> <p>17 Q. Is that a yes?</p> <p>18 A. That's right.</p> <p>19 Q. Did you ever learn that Mr. Davis had</p> <p>20 attended one of these press conferences and had</p> <p>21 been kicked out of the press conference?</p> <p>22 MR. ROSSETTI: Objection.</p>   | <p>1 MR. ROSSETTI: Objection.</p> <p>2 A. Into press conferences? There wasn't</p> <p>3 a media into the press conference. The press had</p> <p>4 to go through the public affairs office.</p> <p>5 BY MR. THEODOROU:</p> <p>6 Q. Did he have the authority to clear</p> <p>7 media?</p> <p>8 A. No.</p> <p>9 Q. Do you know if he had authority to</p> <p>10 clear Mr. Davis into the press conference on</p> <p>11 October 31st?</p> <p>12 MR. ROSSETTI: Objection.</p> <p>13 A. Not that I'm aware of. No.</p> <p>14 BY MR. THEODOROU:</p> <p>15 Q. As far as you know, if Mr. Malvey</p> <p>16 facilitated Mr. Davis's attendance at the press</p> <p>17 conference, Mr. Malvey's actions were contrary to</p> <p>18 Treasury policy, correct?</p> <p>19 MR. ROSSETTI: Objection.</p> <p>20 A. I don't -- I'm not -- I'm sorry.</p> <p>21 BY MR. THEODOROU:</p> <p>22 Q. Well, if Mr. Malvey, based on what you</p> |

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|--|---|
| <p>1 testified, if Mr. Malvey facilitated Davis's</p> <p>2 attendance at the October 31st, 2001 press</p> <p>3 conference, Mr. Malvey acted contrary to customary</p> <p>4 Treasury policy, correct?</p> <p>5 MR. ROSSETTI: Objection.</p> <p>6 A. If anybody cleared him, a nonmedia</p> <p>7 person for that press conference, that was not</p> <p>8 with the way it was supposed to work.</p> <p>9 BY MR. THEODOROU:</p> <p>10 Q. Did you ever have any discussions with</p> <p>11 Mr. Malvey about who could and could not attend</p> <p>12 quarterly refunding press conference?</p> <p>13 MR. ROSSETTI: Objection.</p> <p>14 A. Not that I recall.</p> <p>15 MR. THEODOROU: What is your objection</p> <p>16 other than the fact that you don't like the</p> <p>17 question?</p> <p>18 MR. ROSSETTI: I'm sorry.</p> <p>19 MR. THEODOROU: What is your objection</p> <p>20 other than the fact that you don't like the</p> <p>21 question.</p> <p>22 MS. WILLIAMS: Didn't we stipulate that</p> | <p>1 Q. And you see where it begins where</p> <p>2 there's an E-mail from Tony Fratto to someone</p> <p>3 named Meghan Hills, do you see that?</p> <p>4 A. Yes.</p> <p>5 Q. Do you know who Meghan Hills was?</p> <p>6 A. No.</p> <p>7 Q. Now, attached to his E-mail there's a</p> <p>8 Wall Street Journal article. Do you see that at</p> <p>9 the bottom?</p> <p>10 A. Yes.</p> <p>11 Q. And it starts off by saying, "The</p> <p>12 Treasury Department facing criticism after an</p> <p>13 industry consultant attended a press only briefing</p> <p>14 last month and leaked market moving news yesterday</p> <p>15 outlined new rules to try to keep it's news under</p> <p>16 wraps." Do you see that?</p> <p>17 A. Yes.</p> <p>18 Q. "The changes which some bond trader</p> <p>19 said were overdue would bring the Treasury more in</p> <p>20 line with the way other government agencies</p> <p>21 including the Federal Reserve and the labor</p> <p>22 department will release market-sensitive news."</p> |
| Page 103   | Page 105  |
| <p>1 all objections are reserved to the form?</p> <p>2 MR. ROSSETTI: Yes.</p> <p>3 MS. WILLIAMS: Okay. Then why are you</p> <p>4 asking --</p> <p>5 BY MR. THEODOROU:</p> <p>6 Q. All right. Do you know who Jill</p> <p>7 Ouseley is?</p> <p>8 A. I don't think so.</p> <p>9 Q. Do you know who Roger Anderson is?</p> <p>10 A. No.</p> <p>11 Q. Do you know if Peter Davis ever had a</p> <p>12 confidentiality agreement with an employee or any</p> <p>13 representative of the Treasury Department?</p> <p>14 MR. ROSSETTI: Objection.</p> <p>15 A. Not that I know of.</p> <p>16 MR. THEODOROU: Let's go to the next</p> <p>17 exhibit.</p> <p>18 (Deposition Exhibit No. 7 was marked for</p> <p>19 identification.)</p> <p>20 BY MR. THEODOROU:</p> <p>21 Q. Now, do you have Exhibit 7, Ms. Davis?</p> <p>22 A. Yes.</p>  | <p>1 Do you see that?</p> <p>2 A. Correct.</p> <p>3 Q. Do you recall this article?</p> <p>4 A. No.</p> <p>5 Q. What changed were implemented?</p> <p>6 A. What changes? How we did the</p> <p>7 quarterly refunding?</p> <p>8 Q. It talks about this particular article</p> <p>9 said that outline new rules to try to keep its</p> <p>10 news under wraps?</p> <p>11 A. Well, that's the reporter's words.</p> <p>12 Q. So what changes were implemented?</p> <p>13 MR. ROSSETTI: Objection.</p> <p>14 A. We do the release in the Treasury</p> <p>15 press room, which is where the reporters work and</p> <p>16 check everyone's ID coming in the room.</p> <p>17 BY MR. THEODOROU:</p> <p>18 Q. What other changes were implemented?</p> <p>19 A. Those were the main ones, there's</p> <p>20 still an embargo and there's --</p> <p>21 Q. When it says in announcing the</p> <p>22 changes, let me go to the next paragraph,</p>   |

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|---|--|
| <p>1 "Treasury officials acknowledge the recent leak<br/>2 probably wasn't the first time that someone from<br/>3 outside the press core found their way into a<br/>4 Treasury press briefing, raising the possibility<br/>5 that bond traders had been receiving early word on<br/>6 market-moving news at Treasury for years."<br/>7 Then the next paragraph, "It's likely that<br/>8 others in the past have participated in press<br/>9 briefings, though they weren't members of the<br/>10 press, said Tony Fratto, a spokesman for the<br/>11 Treasury Department." Do you see that?<br/>12 A. Yes.<br/>13 Q. Do you remember Mr. Fratto saying<br/>14 that?<br/>15 MR. FREEBORNE: Objection.<br/>16 A. No.<br/>17 BY MR. THEODOROU:<br/>18 Q. But you have no reason to believe that<br/>19 he didn't say that?<br/>20 MR. ROSSETTI: Objection.<br/>21 A. No.<br/>22 BY MR. THEODOROU:</p>  | <p>1 BY MR. THEODOROU:<br/>2 Q. Right. The article. The article says<br/>3 that, "The changes will bring Treasury more in<br/>4 line with the way other government agencies<br/>5 including the Federal Reserve and the Labor<br/>6 Department release market-sensitive news." So you<br/>7 remember now the release was to occur in the press<br/>8 room, correct?<br/>9 A. Yes.<br/>10 Q. Credentials were to be checked,<br/>11 correct?<br/>12 A. Yes.<br/>13 Q. What else do you recall about the<br/>14 changes?<br/>15 A. Those are the main changes.<br/>16 Q. What about the timing? Would the<br/>17 timing of the embargo be announced ahead of time?<br/>18 Or is it announced ahead of time?<br/>19 A. It's always said at the beginning of<br/>20 the month, at the beginning of the release.<br/>21 Q. Now, are these procedures in writing?<br/>22 A. I don't know.</p>  |
| Page 107  | Page 109   |
| <p>1 Q. Now, it says, "Some of the changes are<br/>2 quite elementary. Now, for instance, instead of<br/>3 releasing information to the press an hour or so<br/>4 before it is publically" -- well, I guess, well, I<br/>5 guess I don't have the full portion of it there on<br/>6 that. I don't know whether you can read it the<br/>7 rest?<br/>8 A. No. It's missing a couple of lines.<br/>9 Q. So why don't we go through what you<br/>10 remember about these changes again?<br/>11 A. We moved into the press room where the<br/>12 reporters work and we checked everyone's ID on the<br/>13 way in, make sure they were reporters.<br/>14 Q. Well, it says that you were also going<br/>15 to bring, it says that you were going to bring,<br/>16 the changes will bring the Treasury more in line<br/>17 with the way other agencies including the Federal<br/>18 Reserve and Labor Department work, release<br/>19 market-sensitive news is what it says.<br/>20 MR. FREEBORNE: It's what you said.<br/>21 MR. ROSSETTI: It's what the article<br/>22 says.</p> | <p>1 Q. What about the time for the embargo,<br/>2 was that reduced?<br/>3 A. I don't recall what the time used to<br/>4 be.<br/>5 Q. Now, that article stated and then I<br/>6 read the paragraph to you that, "Treasury<br/>7 officials acknowledge the release of the leak<br/>8 probably wasn't the first time that someone from<br/>9 outside the press core found their way into a<br/>10 Treasury briefing raising the possibility that<br/>11 bond traders had been receiving early word of<br/>12 market-moving news from Treasury for years." Do<br/>13 you see that?<br/>14 A. I'm sorry. I don't know what page<br/>15 you're on.<br/>16 MR. FREEBORNE: He's on the first page.<br/>17 A. I'm sorry. Yes. I see that.<br/>18 BY MR. THEODOROU:<br/>19 Q. Now, based upon what you knew in<br/>20 October or based on what you knew after October<br/>21 31st, 2001, do you agree with that statement that<br/>22 nonjournalists were probably able to attend the</p> |

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|---|---|
| <p>1 press briefings?</p> <p>2 MR. ROSSETTI: Objection.</p> <p>3 BY MR. THEODOROU:</p> <p>4 Q. Before October 31?</p> <p>5 A. From what I recall, this person came,</p> <p>6 it wasn't the first time he had come to one of</p> <p>7 these press briefings, so. Yes.</p> <p>8 Q. Now, were you familiar or did you --</p> <p>9 let me rephrase that. After October 31st, 2001,</p> <p>10 as the assistant secretary in charge of public</p> <p>11 affairs, did you become familiar with the</p> <p>12 procedures used by the Federal Reserve and the</p> <p>13 Labor Department regarding embargoes?</p> <p>14 A. Not the Labor Department but the</p> <p>15 Federal Reserve.</p> <p>16 Q. How did the Federal Reserve handle</p> <p>17 press conferences and embargo information?</p> <p>18 A. I don't know how they handle press</p> <p>19 conferences but they handle their releases by</p> <p>20 faxing them to the Treasury press room.</p> <p>21 Q. Do you know whether anybody ever</p> <p>22 checked for any identification of people attending</p> | <p>1 likely that others in the past have found their</p> <p>2 way into these things. Do you see that?</p> <p>3 A. Yes.</p> <p>4 Q. Did Tony Fratto ever tell you that or</p> <p>5 something to that effect?</p> <p>6 A. Like I said, I think that was the</p> <p>7 conclusion we all came to once this happened that</p> <p>8 we'll never be able to say for certain but it</p> <p>9 certainly was not an impossible thing to do.</p> <p>10 Q. Then he says in the last paragraph, I</p> <p>11 meant that long before the highly professional and</p> <p>12 competent Bush Administration Treasury appointees</p> <p>13 arrived on the scene the place leaked like a siv.</p> <p>14 Do you see that?</p> <p>15 A. Yes.</p> <p>16 Q. Did you have any discussions with him</p> <p>17 about what he meant when he said it leaked like a</p> <p>18 siv?</p> <p>19 MR. ROSSETTI: Objection.</p> <p>20 A. I'm not on this E-mail.</p> <p>21 BY MR. THEODOROU:</p> <p>22 Q. Well, I know you're not on the E-mail.</p>                                |
| Page 111  | Page 113  |
| <p>1 the press conferences before October 31st, 2001?</p> <p>2 MR. ROSSETTI: Objection.</p> <p>3 A. Not that I know.</p> <p>4 BY MR. THEODOROU:</p> <p>5 Q. Do you know whether Treasury verified</p> <p>6 the identification of those attending the October</p> <p>7 31st, 2001 press conference?</p> <p>8 MR. ROSSETTI: Objection.</p> <p>9 A. Obviously they didn't.</p> <p>10 BY MR. THEODOROU:</p> <p>11 Q. Well, I'm just asking. Do you agree</p> <p>12 with the statement in the article that Treasury</p> <p>13 did not do a good job policing its audience at the</p> <p>14 October 31st press conference?</p> <p>15 MR. ROSSETTI: Objection.</p> <p>16 A. Yes. It must not have at the time.</p> <p>17 BY MR. THEODOROU:</p> <p>18 Q. Now, if you look at Tony Fratto's</p> <p>19 E-mail on November 15, 2001 to Meghan Hills, he</p> <p>20 says he was asked if this was the first time that</p> <p>21 someone got into a Treasury press conference. I</p> <p>22 replied, I can't say for certain, but I think it's</p>                         | <p>1 I'm asking whether you ever had any discussions</p> <p>2 about the Treasury Department leaking like a siv</p> <p>3 before the Bush Administration appointees got in?</p> <p>4 A. No.</p> <p>5 Q. And he goes on to say that we wouldn't</p> <p>6 be talking if our predecessors hadn't been letting</p> <p>7 jokers like Pete Davis into refunding</p> <p>8 announcements for the past eight years. Do you</p> <p>9 see that?</p> <p>10 A. Yes.</p> <p>11 Q. Did you have any discussions with Mr.</p> <p>12 Fratto about what your predecessors had been doing</p> <p>13 about nontreasury employees attending quarterly</p> <p>14 refunding conferences?</p> <p>15 A. No. Other than it came up pretty</p> <p>16 quickly that he had been attending these things</p> <p>17 for quite some time.</p> <p>18 Q. After October 31st, 2001, the</p> <p>19 Department found it necessary, though, to</p> <p>20 implement procedures as to how these press</p> <p>21 conferences and embargoes were going to be</p> <p>22 handled, correct?</p> |

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|--|--|
| <p>1 A. Yes.</p> <p>2 Q. And those procedures are written</p> <p>3 somewhere?</p> <p>4 A. Like it say, I don't know. You asked</p> <p>5 me that before and I don't know.</p> <p>6 Q. But before October 31st, 2001, you're</p> <p>7 not aware of any written procedures in effect?</p> <p>8 A. Not that I recall.</p> <p>9 Q. When I say written procedures, I'm</p> <p>10 talking about written procedures about quarterly</p> <p>11 refunding press conferences and embargoes,</p> <p>12 correct?</p> <p>13 A. Right. I don't recall any written</p> <p>14 procedures for those events.</p> <p>15 Q. Being in effect. Okay. In that</p> <p>16 E-mail where Mr. Fratto wrote that he thought it</p> <p>17 was very likely that others have gotten into these</p> <p>18 things in the past, do you agree with that</p> <p>19 statement?</p> <p>20 MR. ROSSETTI: Objection.</p> <p>21 A. He was closer to it than I was. I</p> <p>22 don't -- I didn't attend those events.</p> | <p>1 BY MR. THEODOROU:</p> <p>2 Q. So you don't recall whether the Bush</p> <p>3 Administration did a better job than the prior</p> <p>4 administration protecting the confidentiality of</p> <p>5 information?</p> <p>6 MR. ROSSETTI: Objection.</p> <p>7 A. I don't recall what was being</p> <p>8 inherited from the previous administration, so I</p> <p>9 can't make a comparison.</p> <p>10 BY MR. THEODOROU:</p> <p>11 Q. Now, was it customary for the copies</p> <p>12 of quarterly refunding refunding statement to be</p> <p>13 handed out to attendees at the quarterly refunding</p> <p>14 press conferences?</p> <p>15 A. I didn't attend those events.</p> <p>16 Q. Well, do you know whether or not --</p> <p>17 A. I don't know.</p> <p>18 Q. -- they handed out statements?</p> <p>19 A. I don't know.</p> <p>20 Q. Do you know who was in charge of</p> <p>21 preparing Mr. Fisher's statement that went out on</p> <p>22 October 31st?</p> |
| Page 115   | Page 117   |
| <p>1 BY MR. THEODOROU:</p> <p>2 Q. Do you agree with the statement that</p> <p>3 Treasury leaked like a siv before the Bush</p> <p>4 Administration's arrival?</p> <p>5 MR. ROSSETTI: Objection.</p> <p>6 MR. FREEBORNE: I think you already</p> <p>7 asked that.</p> <p>8 MR. THEODOROU: I don't remember the</p> <p>9 answer.</p> <p>10 A. I don't -- it was much fresher in my</p> <p>11 memory in 2001 than it is today. It's too long</p> <p>12 ago. I don't remember.</p> <p>13 BY MR. THEODOROU:</p> <p>14 Q. Do you believe that the Bush</p> <p>15 Administration did a better job than the prior</p> <p>16 administration protecting the confidentiality of</p> <p>17 Treasury information?</p> <p>18 MR. ROSSETTI: Objection.</p> <p>19 A. Same answer. I don't remember</p> <p>20 anymore. In 2001 what the situation was when we</p> <p>21 came in was much more clearer to me than it is now</p> <p>22 seven years later.</p>                                    | <p>1 A. No.</p> <p>2 MR. ROSSETTI: I'm sorry, Nick, what</p> <p>3 was your last question?</p> <p>4 MR. THEODOROU: I asked first do you</p> <p>5 know who was responsible or in charge of preparing</p> <p>6 Mr. Fisher's statement that was going to be handed</p> <p>7 out to the attendees at the press conference or</p> <p>8 something to that effect, was my question. And</p> <p>9 your answer is?</p> <p>10 A. I said no.</p> <p>11 BY MR. THEODOROU:</p> <p>12 Q. Do you know Frances Anderson is?</p> <p>13 A. Yes.</p> <p>14 Q. Who is that?</p> <p>15 A. She's a member of my staff.</p> <p>16 Q. Do you know whether she had any</p> <p>17 responsibility for preparing the statement that</p> <p>18 was to be distributed at the conference?</p> <p>19 A. She would not have prepared a</p> <p>20 statement, no. She would have been involved in</p> <p>21 distributing it.</p> <p>22 Q. And do you know if she was involved in</p>               |

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|---|---|
| <p>1 distributing the statement that day?</p> <p>2 A. Yes.</p> <p>3 MR. ROSSETTI: I'm sorry. Are you</p> <p>4 aware that she was or she did?</p> <p>5 MR. THEODOROU: She said yes.</p> <p>6 MR. ROSSETTI: Well, you asked her if</p> <p>7 she was aware.</p> <p>8 MR. THEODOROU: I said whether she was</p> <p>9 aware of Ms. Anderson being involved in the</p> <p>10 distribution.</p> <p>11 MR. ROSSETTI: And she said yes. So</p> <p>12 your question doesn't answer whether or not she</p> <p>13 knows if indeed she was.</p> <p>14 BY MR. THEODOROU:</p> <p>15 Q. Do you know whether Frances Anderson</p> <p>16 distributed the statement that day to the people</p> <p>17 attending the conference?</p> <p>18 A. No, I wasn't there.</p> <p>19 Q. So you don't know whether Frances</p> <p>20 Anderson prepared the version, when I say not</p> <p>21 prepared the actual statement but the version that</p> <p>22 went out to the various people attending the</p> | <p>1 release?</p> <p>2 A. Yes.</p> <p>3 Q. Were you aware on October 30th, the</p> <p>4 morning of October 31st, 2001 this version that</p> <p>5 says immediate release was distributed to some of</p> <p>6 the attendees at the conference?</p> <p>7 MR. ROSSETTI: Objection.</p> <p>8 A. No.</p> <p>9 BY MR. THEODOROU:</p> <p>10 Q. Do you know why for immediate release</p> <p>11 was put on this version of the statement?</p> <p>12 MR. ROSSETTI: Objection.</p> <p>13 A. No.</p> <p>14 BY MR. THEODOROU:</p> <p>15 Q. If this was distributed at the October</p> <p>16 31st, 2001 conference, who had the responsibility</p> <p>17 of putting this version of the statement together</p> <p>18 or preparing this version of the statement?</p> <p>19 MR. ROSSETTI: Objection.</p> <p>20 A. I don't know. It wasn't any of my</p> <p>21 staff.</p> <p>22 BY MR. THEODOROU:</p>   |
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| <p>1 conference. In other words --</p> <p>2 A. Like --</p> <p>3 Q. -- what it looked like?</p> <p>4 A. No.</p> <p>5 MR. THEODOROU: So let me show you</p> <p>6 this.</p> <p>7 (Deposition Exhibit No. 8 was marked for</p> <p>8 identification.)</p> <p>9 BY MR. THEODOROU:</p> <p>10 Q. Directing your attention to what's</p> <p>11 been marked Northern Exhibit 8. Do you see that?</p> <p>12 A. Yes.</p> <p>13 Q. Have you seen this document before?</p> <p>14 A. Probably back then.</p> <p>15 Q. Do you know whether -- so when you say</p> <p>16 probably, you saw this back at the time?</p> <p>17 A. Yes.</p> <p>18 Q. Did you see it before it was</p> <p>19 distributed at the October 31st, 2001 press</p> <p>20 conference?</p> <p>21 A. Not that I recall.</p> <p>22 Q. Do you see where it says for immediate</p>   | <p>1 Q. If there is an embargo that's in place</p> <p>2 or if there was an embargo in place at the press</p> <p>3 conference, it's unusual to have for immediate</p> <p>4 release put on the version of the statement; isn't</p> <p>5 that right?</p> <p>6 MR. ROSSETTI: Objection.</p> <p>7 A. Yes.</p> <p>8 BY MR. THEODOROU:</p> <p>9 Q. Was that a yes?</p> <p>10 A. Yes.</p> <p>11 Q. Thank you. And in fact, it would be</p> <p>12 contrary to the practice, to Treasury practice</p> <p>13 concerning announcements at quarterly refunding</p> <p>14 conferences where there was an embargo to have</p> <p>15 something like an immediate release on a version</p> <p>16 of the statement that was going to the press and</p> <p>17 others at the conference?</p> <p>18 MR. ROSSETTI: Objection?</p> <p>19 BY MR. THEODOROU:</p> <p>20 Q. Isn't that right?</p> <p>21 A. Contrary to the practice, I don't</p> <p>22 recall.</p> |

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|---|---|
| <p>1 Q. When you had an embargo at press</p> <p>2 conferences, was it Treasury's practice to have</p> <p>3 for immediate release put on statements?</p> <p>4 A. No.</p> <p>5 Q. It was not, correct?</p> <p>6 A. Correct.</p> <p>7 Q. Was it the practice at these quarterly</p> <p>8 refunding press conferences to hand out versions,</p> <p>9 hand out the statements that were being made?</p> <p>10 A. You already asked me that. I said I</p> <p>11 don't know. I wasn't there.</p> <p>12 Q. Oh, you don't know. I'm sorry.</p> <p>13 Turning to the quarterly refunding conference in</p> <p>14 October, 2001, did Treasury provide embargoed</p> <p>15 information or alleged embargoed information</p> <p>16 directly to the press by any other means other</p> <p>17 than handing out a statement at the press</p> <p>18 conference or having them just attend the press</p> <p>19 conference and listening to the announcement?</p> <p>20 In other words, did the statement get</p> <p>21 distributed by any other means other than directly</p> <p>22 to the reporters at the conference?</p> | <p>1 BY MR. THEODOROU:</p> <p>2 Q. Yes. Before the embargoed time?</p> <p>3 A. I don't know.</p> <p>4 Q. Would that have been acceptable to</p> <p>5 give a reporter information who wasn't at the</p> <p>6 conference for someone in Treasury to send the</p> <p>7 information to a reporter or a press outlet who</p> <p>8 didn't, where the press outlet didn't have a</p> <p>9 representative at the conference?</p> <p>10 MR. ROSSETTI: Objection.</p> <p>11 A. It would only be appropriate for a</p> <p>12 Treasury public affairs person to do it, not</p> <p>13 anyone else and it would depend on the</p> <p>14 circumstances and knowing if a reporter was going</p> <p>15 to respect the embargo.</p> <p>16 BY MR. THEODOROU:</p> <p>17 Q. Did that happen on October 31st, 2001?</p> <p>18 A. I don't know.</p> <p>19 Q. Did you know about Ms. Holahan</p> <p>20 E-mailing someone named Chip Aiken at CNBC at 8:57</p> <p>21 a.m. with the information?</p> <p>22 A. I may have known that. I don't recall</p> |
| Page 123  | Page 125  |
| <p>1 MR. ROSSETTI: Objection?</p> <p>2 MR. FREEBORNE: Which question is she</p> <p>3 supposed to respond to?</p> <p>4 BY MR. THEODOROU:</p> <p>5 Q. I'll break it down. At these</p> <p>6 quarterly refunding press conferences, was alleged</p> <p>7 embargoed information given out to the press by</p> <p>8 any other means besides handing out a statement or</p> <p>9 just having the press in the room listening to the</p> <p>10 statement. In other words, was it sent to members</p> <p>11 of the press who weren't in the room?</p> <p>12 MR. FREEBORNE: That's broken down?</p> <p>13 MR. THEODOROU: Yes.</p> <p>14 MR. ROSSETTI: Objection.</p> <p>15 A. Not that I know of.</p> <p>16 BY MR. THEODOROU:</p> <p>17 Q. Not that you know of. Okay. Did</p> <p>18 Treasury provide embargoed information to</p> <p>19 reporters who weren't present at the conference?</p> <p>20 A. I don't know.</p> <p>21 MR. FREEBORNE: Before 10 a.m., I</p> <p>22 assume?</p>  | <p>1 now.</p> <p>2 Q. Would that have been acceptable?</p> <p>3 A. Yes.</p> <p>4 Q. Now, why could she send the</p> <p>5 information to Chip Aiken at CNBC?</p> <p>6 A. Because reporters respect embargoes.</p> <p>7 It's the whole purpose of the embargo to be able</p> <p>8 to give something to the reporter earlier.</p> <p>9 Q. Did you say the reporters respect the</p> <p>10 embargo or reporters are expected to respect the</p> <p>11 embargo?</p> <p>12 A. They're expected to respect the</p> <p>13 embargo.</p> <p>14 Q. Now, my question is before the press</p> <p>15 conference, does anybody explain what the embargo</p> <p>16 was about; in other words, what an embargo is?</p> <p>17 MR. ROSSETTI: Objection.</p> <p>18 BY MR. THEODOROU:</p> <p>19 Q. Do you know whether on October 31st,</p> <p>20 2001 someone from Treasury told the attendees at</p> <p>21 the conference what the embargo was?</p> <p>22 MR. ROSSETTI: Objection. I think</p>   |

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| <p>1 you've asked that question like five times today.<br/> 2 Really.<br/> 3 MR. THEODOROU: Fine.<br/> 4 A. I wasn't there.<br/> 5 BY MR. THEODOROU:<br/> 6 Q. Did you know that Ms. Holahan E-mailed<br/> 7 Jonathan Ferber at the New York Times?<br/> 8 A. No.<br/> 9 Q. At 9:30 a.m.?<br/> 10 A. No.<br/> 11 Q. Do you know that she E-mailed someone<br/> 12 named Greg Ipp at the Wall Street Journal at 9:32<br/> 13 a.m.?<br/> 14 A. No. Those would have all been<br/> 15 standard.<br/> 16 Q. That's all standard practice to go to<br/> 17 outside outlets?<br/> 18 A. That's the purpose of the embargo<br/> 19 press release is to give text early to reporters<br/> 20 so they'd have it before the embargo is up.<br/> 21 Q. Before October 31st, 2001 in our<br/> 22 experience as assistant secretary of public</p>   | <p>1 anyone said at any of these events.<br/> 2 Q. So is it your testimony that you don't<br/> 3 know whether anybody from your office ever defined<br/> 4 for the people attending the event what the term<br/> 5 embargo is?<br/> 6 MR. ROSSETTI: Objection.<br/> 7 A. I can't imagine any reporter needing<br/> 8 to have the word embargo defined to them.<br/> 9 BY MR. THEODOROU:<br/> 10 Q. Right. But that's not my question.<br/> 11 My question is whether anybody from your office.<br/> 12 Do you know whether anybody from your office ever<br/> 13 described, defined or told the people attending<br/> 14 the press conference what an embargo means?<br/> 15 MR. ROSSETTI: Objection.<br/> 16 A. I was not at any of these events, so I<br/> 17 don't know what anyone said there.<br/> 18 MR. THEODOROU: Let's take a 5 minute<br/> 19 break.<br/> 20 THE VIDEO OPERATOR: Off the record at<br/> 21 3:10:41.<br/> 22 On the record at 3:19:36.</p>   |
| Page 127   | Page 129  |
| <p>1 affairs, do you know of any instances where people<br/> 2 from your office in one of these press conferences<br/> 3 explained to the press what the embargo is?<br/> 4 MR. ROSSETTI: Objection.<br/> 5 A. I don't understand the premise of your<br/> 6 question.<br/> 7 BY MR. THEODOROU:<br/> 8 Q. Do you know were there anybody from<br/> 9 your office --<br/> 10 MR. FREEBORNE: We need to make sure --<br/> 11 BY MR. THEODOROU:<br/> 12 Q. Okay. Here we go. Do you know<br/> 13 whether anybody from your office ever stood before<br/> 14 reporters or anybody attending one of these<br/> 15 quarterly refunding press conferences and<br/> 16 described to them what an embargo means?<br/> 17 MR. ROSSETTI: Objection.<br/> 18 A. I never attended any of these events.<br/> 19 BY MR. THEODOROU:<br/> 20 Q. So is that that you don't know whether<br/> 21 someone told them what an embargo means?<br/> 22 A. Right. I mean, I don't know what</p> | <p>1 BY MR. THEODOROU:<br/> 2 Q. Ms. Davis, you testified earlier that<br/> 3 you learned about the elimination of the 30-year<br/> 4 bond a few days before the press conference?<br/> 5 A. That's my best recollection.<br/> 6 Q. Was that information made available to<br/> 7 other people in Government outside of Treasury?<br/> 8 MR. ROSSETTI: Objection.<br/> 9 A. Not that I'm aware of.<br/> 10 BY MR. THEODOROU:<br/> 11 Q. Do you know if it was made available<br/> 12 to any foreign banks or foreign central banks?<br/> 13 A. Not that I'm aware of.<br/> 14 BY MR. THEODOROU:<br/> 15 Q. Did you ever learn of any reporters<br/> 16 who attended the October 31 press conference who<br/> 17 disclosed the information on the 30-year bond<br/> 18 before the 10 a.m. embargo time?<br/> 19 A. I don't recall but once it was posted<br/> 20 on the website, the embargo was sort of -- I mean,<br/> 21 that would be a signal to most reporters that they<br/> 22 didn't have to wait until 10.</p> |

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| <p>1 Q. Did you ever learn that reporters from</p> <p>2 Reuters published the information before 10 a.m.?</p> <p>3 A. I may have then, I don't recall now.</p> <p>4 Q. In fact, did you ever learn that they</p> <p>5 published it about 9:52?</p> <p>6 MR. ROSSETTI: Objection.</p> <p>7 A. I don't recall.</p> <p>8 BY MR. THEODOROU:</p> <p>9 Q. Do you know if -- well let me -- do</p> <p>10 you recall a reporter named Jonathan Nicholson</p> <p>11 from Reuters disclosing the information about</p> <p>12 9:52?</p> <p>13 MR. ROSSETTI: Objection.</p> <p>14 A. I just said I don't recall.</p> <p>15 BY MR. THEODOROU:</p> <p>16 Q. So is it fair to say that you don't</p> <p>17 know if Treasury took any action against him for</p> <p>18 reporting it?</p> <p>19 MR. ROSSETTI: Objection.</p> <p>20 A. We already had the information on the</p> <p>21 web site.</p> <p>22 BY MR. THEODOROU:</p> | <p>1 A. Yes.</p> <p>2 Q. Now, you just testified that given</p> <p>3 that the information had gone out at 9:43 or</p> <p>4 before 9:52, correct, that there was no reason to</p> <p>5 discipline the reporter who sent this out, this</p> <p>6 information, correct?</p> <p>7 A. Once we had released the information,</p> <p>8 that was essentially the end of the embargo.</p> <p>9 Q. So it's your -- so the embargo no</p> <p>10 longer applied because the information already had</p> <p>11 been released --</p> <p>12 A. Was on our website.</p> <p>13 Q. -- before that. Do you know who Brian</p> <p>14 Collins is?</p> <p>15 A. No.</p> <p>16 Q. Well, let me represent to you that he</p> <p>17 was a columnist in October, 2001 for National</p> <p>18 Mortgage News. Are you aware that at</p> <p>19 approximately 9:35 a.m. on October 31st he called</p> <p>20 Janice Schmidt, an official at Fannie Mae and told</p> <p>21 her about the decision to suspend the 30-year</p> <p>22 bond?</p> |
| Page 131   | Page 133   |
| <p>1 Q. Because the information had gone up at</p> <p>2 9:43?</p> <p>3 A. I don't remember the exact time but</p> <p>4 whatever time it was.</p> <p>5 Q. So given that -- and let me show you</p> <p>6 an exhibit for a second.</p> <p>7 (Deposition Exhibit No. 9 was marked for</p> <p>8 identification.)</p> <p>9 BY MR. THEODOROU:</p> <p>10 Q. I want to show you what's been marked</p> <p>11 Exhibit 9. Do you have that?</p> <p>12 A. Yes.</p> <p>13 Q. And you see where that's a Reuters</p> <p>14 report on the bond suspension?</p> <p>15 A. Yes.</p> <p>16 Q. It says U.S. Treasury, it say</p> <p>17 discontinuing sales regular index 30-year bonds?</p> <p>18 A. Yes.</p> <p>19 Q. Do you see where the date on that is</p> <p>20 it says received by news E-D-G-E slash L-A-N?</p> <p>21 A. Yes.</p> <p>22 Q. 9:52 a.m.?</p>  | <p>1 MR. ROSSETTI: Objection.</p> <p>2 A. No.</p> <p>3 BY MR. THEODOROU:</p> <p>4 Q. So you've never heard about this</p> <p>5 incident?</p> <p>6 A. No, not that I recall. I may have</p> <p>7 then.</p> <p>8 Q. So it's fair to say that you cannot</p> <p>9 recall any disciplinary action being taken against</p> <p>10 Mr. Collins by Treasury?</p> <p>11 MR. ROSSETTI: Objection?</p> <p>12 A. No.</p> <p>13 BY MR. THEODOROU:</p> <p>14 Q. If Mr. Collins did send out that</p> <p>15 information to National Mortgage at 9:35 a.m., he</p> <p>16 violated the embargo, didn't he?</p> <p>17 MR. ROSSETTI: Objection.</p> <p>18 A. If he did -- I'm sorry.</p> <p>19 BY MR. THEODOROU:</p> <p>20 Q. If Mr. Collins, assume that the</p> <p>21 embargoed information went out on the website at</p> <p>22 9:43, if Mr. Collins notified Fannie Mae about</p>   |

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| Page 134  | Page 136   |
|---|--|
| <p>1 the decision to suspend the 30-year bond at 9:35</p> <p>2 a.m. that morning, he violated the embargo, didn't</p> <p>3 he?</p> <p>4 MR. ROSSETTI: Objection.</p> <p>5 A. That's not the same as making it</p> <p>6 public but it would not be appropriate to do.</p> <p>7 BY MR. THEODOROU:</p> <p>8 Q. It would not, it was not appropriate</p> <p>9 for him to notify Fannie Mae, correct?</p> <p>10 MR. ROSSETTI: Objection.</p> <p>11 A. Correct.</p> <p>12 BY MR. THEODOROU:</p> <p>13 Q. You say it's not the same as making it</p> <p>14 public. Why isn't it the same as making it</p> <p>15 public?</p> <p>16 A. An embargo is about when you release</p> <p>17 information when it goes out on the wire, when it</p> <p>18 goes out on TV.</p> <p>19 Q. So when you talk about embargo, the</p> <p>20 embargo that applied that day is about a press</p> <p>21 embargo as to when the press alerts the world</p> <p>22 about the information; isn't that right?</p> | <p>1 MR. ROSSETTI: Objection.</p> <p>2 BY MR. THEODOROU:</p> <p>3 Q. Posting the information on the</p> <p>4 internet resulted in the information being</p> <p>5 disseminated to the public, correct?</p> <p>6 MR. ROSSETTI: Objection.</p> <p>7 A. Yes.</p> <p>8 BY MR. THEODOROU:</p> <p>9 Q. Now, did you, yourself investigate how</p> <p>10 Mr. Fisher's statement got posted on the website</p> <p>11 before the 10 a.m. embargo time?</p> <p>12 A. Like I said, there were many meetings</p> <p>13 at the time looking into all aspect of this.</p> <p>14 Q. What is your understanding as to how</p> <p>15 it got on the website before 10 a.m.?</p> <p>16 A. I mean, it was posted on the website</p> <p>17 before the embargo was up.</p> <p>18 Q. And do you know who did that?</p> <p>19 A. Frances.</p> <p>20 Q. And why did she do it before then --</p> <p>21 A. I don't know.</p> <p>22 MR. ROSSETTI: Objection.</p> |
| Page 135  | Page 137   |
| <p>1 A. Yes.</p> <p>2 Q. And to your knowledge -- well, you</p> <p>3 don't have -- to your knowledge, Treasury hasn't</p> <p>4 taken any action against Mr. Collins regarding his</p> <p>5 conduct?</p> <p>6 MR. ROSSETTI: Objection.</p> <p>7 A. Not that I know of.</p> <p>8 BY MR. THEODOROU:</p> <p>9 Q. On October, 2001 what was the</p> <p>10 procedure posting quarterly refunding statements</p> <p>11 on the website?</p> <p>12 A. I don't recall.</p> <p>13 Q. When the information was posted on the</p> <p>14 internet, that information was disseminated to the</p> <p>15 general public; isn't that right?</p> <p>16 MR. ROSSETTI: Objection.</p> <p>17 A. I'm sorry?</p> <p>18 BY MR. THEODOROU:</p> <p>19 Q. In other words, once the information</p> <p>20 went out on the website, the information was</p> <p>21 public, correct?</p> <p>22 A. Yes.</p>  | <p>1 A. I don't know.</p> <p>2 MR. THEODOROU: Let me show you the</p> <p>3 next exhibit.</p> <p>4 (Deposition Exhibit No. 10 was marked for</p> <p>5 identification.)</p> <p>6 BY MR. THEODOROU:</p> <p>7 Q. You see Exhibit 10? Do you have</p> <p>8 Exhibit 10 in front of you, Ms. Davis?</p> <p>9 A. Yes.</p> <p>10 Q. Do you see it's an E-mail at the top</p> <p>11 from you to a series of people?</p> <p>12 A. Yes.</p> <p>13 Q. Mr. Malvey, correct, is one of them?</p> <p>14 A. Yes.</p> <p>15 Q. Mr. Fratto?</p> <p>16 A. Uh-huh.</p> <p>17 Q. Correct. Pete Fisher?</p> <p>18 A. Yes.</p> <p>19 Q. And it mentions Tim Adams. Who is Tim</p> <p>20 Adams?</p> <p>21 A. He was the chief of staff then.</p> <p>22 Q. Then David Aufhauser?</p>   |

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| Page 138  | Page 140  |
|---|---|
| <p>1 A. Yes.</p> <p>2 Q. And then a number of other people are</p> <p>3 copied, correct?</p> <p>4 A. Yes.</p> <p>5 Q. What it says is -- you have seen this</p> <p>6 before, haven't you?</p> <p>7 A. Yes.</p> <p>8 Q. "I apologize to all of you for the</p> <p>9 early posting of the website. I thought our</p> <p>10 public affairs staff understood that embargo means</p> <p>11 embargo. I certainly make sure they do now. The</p> <p>12 early posting was for more than unfortunate, it</p> <p>13 was careless and I'll make sure we don't have such</p> <p>14 lapses in the future. I'm sorry that all of you</p> <p>15 are having to take a lot of criticism for the</p> <p>16 carelessness in my shop." Do you recall that,</p> <p>17 sending that E-mail?</p> <p>18 A. I recall that, saying that many times.</p> <p>19 Q. Now, you say I thought our public</p> <p>20 affairs staff understood that embargo means</p> <p>21 embargo. What did embargo mean?</p> <p>22 A. What?</p> | <p>1 MR. ROSSETTI: Objection.</p> <p>2 A. I'm sorry.</p> <p>3 BY MR. THEODOROU:</p> <p>4 Q. Strike that. Was any disciplinary</p> <p>5 employment action taken against any employee for</p> <p>6 what happened, any Treasury employee for what</p> <p>7 happened on October 31st?</p> <p>8 A. I don't recall.</p> <p>9 Q. After the October -- after October</p> <p>10 31st, 2001, Treasury conducted an investigation</p> <p>11 about what happened that day, correct?</p> <p>12 A. Yes.</p> <p>13 Q. And did you were you interviewed by</p> <p>14 any, and who conducted the investigation at</p> <p>15 Treasury?</p> <p>16 A. I don't recall.</p> <p>17 Q. Were you interviewed as part of that</p> <p>18 investigation?</p> <p>19 A. Yes.</p> <p>20 Q. Do you remember who interviewed you?</p> <p>21 A. No.</p> <p>22 MR. THEODOROU: Mark this Exhibit 11.</p>  |
| Page 139  | Page 141  |
| <p>1 Q. When you say that, "I thought our</p> <p>2 public affairs staff understood that embargo means</p> <p>3 embargo."</p> <p>4 A. That she wasn't supposed to put it up</p> <p>5 on the website until 10 o'clock.</p> <p>6 Q. Now, how was your shop careless?</p> <p>7 A. She posted the thing on the website</p> <p>8 before 10 o'clock.</p> <p>9 Q. Was it only Ms. Anderson who was</p> <p>10 careless that day?</p> <p>11 A. I have no idea. I don't remember if</p> <p>12 anyone else was involved in that, in putting the</p> <p>13 paper on the website.</p> <p>14 Q. Now, earlier I asked about Brian</p> <p>15 Collins calling Fannie Mae and you said that</p> <p>16 calling Fannie Mae was not disseminating to the</p> <p>17 public, correct?</p> <p>18 MR. ROSSETTI: Objection.</p> <p>19 A. Yes.</p> <p>20 BY MR. THEODOROU:</p> <p>21 Q. As opposed to getting a press release</p> <p>22 out; is that right?</p>   | <p>1 (Deposition Exhibit No. 11 was marked for</p> <p>2 identification.)</p> <p>3 BY MR. THEODOROU:</p> <p>4 Q. Now, did you discuss this matter with</p> <p>5 the general counsel's office?</p> <p>6 A. Like I said, I don't remember who</p> <p>7 looked into it. I can imagine they would have</p> <p>8 been involved.</p> <p>9 Q. Were you first contacted by the</p> <p>10 general counsel's office before being contacted by</p> <p>11 the inspector general of Treasury?</p> <p>12 A. I don't recall.</p> <p>13 MR. ROSSETTI: Objection.</p> <p>14 A. I don't recall.</p> <p>15 BY MR. THEODOROU:</p> <p>16 Q. Let me ask you this: Who contacted</p> <p>17 you first the general counsel's office about what</p> <p>18 happened that day or was it the inspector general?</p> <p>19 MR. FREEBORNE: I don't think she's --</p> <p>20 MR. ROSSETTI: I don't think she's</p> <p>21 testified that either one of them contacted her.</p> <p>22 MR. THEODOROU: Let me ask her.</p> |

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|---|--|
| <p style="text-align: right;">Page 142</p> <p>1 MR. ROSSETTI: You can ask her if they</p> <p>2 did?</p> <p>3 BY MR. THEODOROU:</p> <p>4 Q. Do you remember being contacted by the</p> <p>5 general counsel's office?</p> <p>6 A. I don't recall.</p> <p>7 Q. Do you remember being contacted by the</p> <p>8 inspector general's office?</p> <p>9 A. I don't recall.</p> <p>10 Q. Do you remember being contacted by the</p> <p>11 SEC?</p> <p>12 A. No.</p> <p>13 MR. ROSSETTI: Are you going to ask her</p> <p>14 to repeat the first 20 minutes of the deposition</p> <p>15 Nick? I mean, really. I don't like to be</p> <p>16 argumentative or anything but you're repeating the</p> <p>17 same questions over and over.</p> <p>18 MR. THEODOROU: Well, look, it's not</p> <p>19 the same question over and over. If you listen,</p> <p>20 there are some differences in the question.</p> <p>21 Secondly, let me just take and finish up the</p> <p>22 deposition, John, all right?</p>              | <p style="text-align: right;">Page 144</p> <p>1 A. I don't remember who I spoke to about</p> <p>2 this.</p> <p>3 MS. WILLIAMS: Do you have a copy where</p> <p>4 the second page isn't cut off at the top?</p> <p>5 MR. THEODOROU: No. Mine has been cut</p> <p>6 off. The copy got cut off. It got cut off. I</p> <p>7 can get everybody clean copies of those if we need</p> <p>8 them.</p> <p>9 BY MR. THEODOROU:</p> <p>10 Q. You testified earlier today that at</p> <p>11 some points have changed. Do you remember I asked</p> <p>12 you about changes that were being made regarding</p> <p>13 the press conferences? I asked you about 30</p> <p>14 minutes ago?</p> <p>15 A. About changes being made to the</p> <p>16 quarterly refunding?</p> <p>17 Q. Yes. Correct.</p> <p>18 A. Yes.</p> <p>19 MR. THEODOROU: Let me show you the</p> <p>20 next exhibit.</p> <p>21 (Deposition Exhibit No. 12 was marked for</p> <p>22 identification.)</p> |
| <p style="text-align: right;">Page 143</p> <p>1 BY MR. THEODOROU:</p> <p>2 Q. This is an E-mail which you did not</p> <p>3 receive. However, it is an E-mail let me turn of</p> <p>4 the bottom page it's from --</p> <p>5 MR. FREEBORNE: What page?</p> <p>6 MR. THEODOROU: First page it's says at</p> <p>7 the bottom, Tom McGivens to a series of people.</p> <p>8 Do you see that at the bottom?</p> <p>9 A. Yes.</p> <p>10 BY MR. THEODOROU:</p> <p>11 Q. If you turn to the next page,</p> <p>12 Mr. McGivens writes, "If there aren't changes</p> <p>13 underway already, I'll talk to Michele Davis about</p> <p>14 the process of press briefing. We'll need to find</p> <p>15 out if this guy had kind some of credentials to</p> <p>16 get into the building or if someone cleared him."</p> <p>17 Do you see that?</p> <p>18 A. Yes.</p> <p>19 Q. Do you remember speaking with</p> <p>20 Mr. McGivens about these issues?</p> <p>21 A. I spoke to --</p> <p>22 MR. ROSSETTI: Objection.</p> | <p style="text-align: right;">Page 145</p> <p>1 BY MR. THEODOROU:</p> <p>2 Q. Do you have Exhibit 12 in front of</p> <p>3 you, Ms. Davis?</p> <p>4 A. Yes.</p> <p>5 Q. Have you seen this before?</p> <p>6 A. I may have. I'm sure I must have if</p> <p>7 it went out.</p> <p>8 Q. Does it look familiar?</p> <p>9 A. I just don't recall it from that long</p> <p>10 ago.</p> <p>11 Q. It says from the Office of Public</p> <p>12 Affairs. Do you see that?</p> <p>13 A. Yes.</p> <p>14 Q. And it says Treasury sets procedures</p> <p>15 for quarterly refunding announcements?</p> <p>16 A. Yes.</p> <p>17 Q. Is it your testimony that -- do you</p> <p>18 know who could have drafted this?</p> <p>19 MR. FREEBORNE: Does she know who</p> <p>20 drafted it?</p> <p>21 A. I don't know specifically who drafted</p> <p>22 it.</p>   |

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|---|--|
| <p style="text-align: right;">Page 146</p> <p>1 BY MR. THEODOROU:</p> <p>2 Q. Let's go through some of these</p> <p>3 procedures, though, that were set. It says that,</p> <p>4 "The Treasury Department of Office is notifying</p> <p>5 it's procedure for disseminating the announcement</p> <p>6 of the government's quarterly refunding needs.</p> <p>7 The changes are intended to improve the timeliness</p> <p>8 and transparency of quarterly refunding</p> <p>9 announcements."</p> <p>10 It says, "Starting with the next scheduled</p> <p>11 refunding announcement on January 30, 2002,</p> <p>12 Treasury's Office of Public Affairs will post the</p> <p>13 announcement of the Treasury website." Was that a</p> <p>14 change posting it on the website?</p> <p>15 A. No. It (inaudible) posted it on the</p> <p>16 website.</p> <p>17 Q. "The announcement also will be</p> <p>18 delivered to credentialed members of the media in</p> <p>19 the Treasury press room shortly before 9 a.m. with</p> <p>20 lock down embargo rules." Was that a change?</p> <p>21 A. From the October one. Yes.</p> <p>22 Q. And how was that a change?</p> | <p style="text-align: right;">Page 148</p> <p>1 the following quarter on the policy statement."</p> <p>2 That was not a change, correct?</p> <p>3 A. Right.</p> <p>4 Q. "The traditional practice of releasing</p> <p>5 the quarterly refunding announcement in a news</p> <p>6 conference will be discontinued." So the</p> <p>7 announcement itself was not going to be given out?</p> <p>8 A. What?</p> <p>9 Q. "It says the traditional practice of</p> <p>10 releasing the quarterly refunding announcement at</p> <p>11 a news conference will be discontinued." Do you</p> <p>12 see that?</p> <p>13 A. Yes. I didn't understand your</p> <p>14 question.</p> <p>15 Q. So how was that a change? They were</p> <p>16 no longer giving out the announcement itself?</p> <p>17 A. No. The announcement was given out at</p> <p>18 the lock down.</p> <p>19 Q. Oh, okay. So the lock down itself</p> <p>20 just simply you can't leave the room until the</p> <p>21 embargo goes out, correct?</p> <p>22 A. Right.</p>   |
| <p style="text-align: right;">Page 147</p> <p>1 A. It's in the press room instead of</p> <p>2 being in the room upstairs.</p> <p>3 Q. What about the lock down embargo</p> <p>4 rules, were those a change?</p> <p>5 A. There were more specific rules about</p> <p>6 what time instead of setting a time, setting a</p> <p>7 time in terms of exact number of minutes from the</p> <p>8 time the paper is released instead of an absolute</p> <p>9 time.</p> <p>10 Q. And what is a lock down embargo?</p> <p>11 A. That's what I just described.</p> <p>12 Q. Describe it again for me?</p> <p>13 A. Once everyone is in the room then</p> <p>14 there's, like, a countdown and someone stays in</p> <p>15 the room to count it down.</p> <p>16 Q. So they cannot leave the room,</p> <p>17 correct?</p> <p>18 A. Right.</p> <p>19 Q. And that was a change?</p> <p>20 A. Yes.</p> <p>21 Q. "The announcements include release of</p> <p>22 the Treasury Department's borrowing estimates on</p>  | <p style="text-align: right;">Page 149</p> <p>1 Q. When did those procedures take affect?</p> <p>2 A. The next quarterly refunding.</p> <p>3 Q. Are they still in effect today?</p> <p>4 A. We may have made some minor</p> <p>5 modifications along the way but as far as I know,</p> <p>6 yes.</p> <p>7 Q. Now, it says, "The announcement also</p> <p>8 will be delivered to credentialed members of the</p> <p>9 media in the Treasury press room shortly before 9</p> <p>10 a.m. with lock down embargo rules." I asked you</p> <p>11 about that a couple of minutes ago, correct. Now,</p> <p>12 did that mean that the reporters no longer could</p> <p>13 make calls to their editors with the information?</p> <p>14 A. It means you can't have any</p> <p>15 conversations outside the room.</p> <p>16 Q. So nothing can leave the room</p> <p>17 including calls to editors or anybody at the press</p> <p>18 offices; is that right?</p> <p>19 A. That's correct.</p> <p>20 Q. And does that also mean that Treasury</p> <p>21 has discontinued the practice of faxing or calling</p> <p>22 in information to outlets who don't have</p> |

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|---|---|
| <p>1 representatives there, like MSNBC, the New York<br/>2 Times, the Wall Street Journal?</p> <p>3 MR. ROSSETTI: Objection.</p> <p>4 A. You have to come to the room.</p> <p>5 BY MR. THEODOROU:</p> <p>6 Q. So members of the press have to be in<br/>7 the room, you can no longer just call their<br/>8 editors and nobody at Treasury is calling an<br/>9 outlet?</p> <p>10 A. That's right.</p> <p>11 Q. Now, when it says that the<br/>12 announcement also be delivered to credentialed<br/>13 members of the media in the press room shortly<br/>14 before 9 a.m. with the lock down embargo rules,<br/>15 how much time do reporters now get to write their<br/>16 stories?</p> <p>17 A. It's usually 15 minutes.</p> <p>18 Q. I beg your pardon?</p> <p>19 A. It's usually 15 minutes.</p> <p>20 Q. All right. And when are they allowed<br/>21 to publish their stories, right at 9 a.m. when the<br/>22 announcement is posted on the website?</p>   | <p>1 Q. Do they explain what the embargo<br/>2 means?</p> <p>3 A. They are all members, so everybody in<br/>4 there knows what an embargo is.</p> <p>5 Q. So what you're saying is you assume<br/>6 that everybody, you assume that all members of the<br/>7 press who are there for that press conference<br/>8 knows what embargo means?</p> <p>9 MR. ROSSETTI: Objection.</p> <p>10 A. They all can't have any contact<br/>11 outside the room.</p> <p>12 MR. THEODOROU: Let me show you the<br/>13 next exhibit.</p> <p>14 (Deposition Exhibit No. 13 was marked for<br/>15 identification.)</p> <p>16 BY MR. THEODOROU:</p> <p>17 Q. Do you have Exhibit 13 in front of<br/>18 you, Ms. Davis?</p> <p>19 A. Yes.</p> <p>20 Q. You see where it's an E-mail from Tony<br/>21 Fratto of April 5, 2002 to a series of people,<br/>22 Peter Fisher, Brian Roseboro and you and others?</p> |
| Page 151  | Page 153  |
| <p>1 A. Yes. That's when the embargo is set<br/>2 for.</p> <p>3 Q. Now, given these new procedures, does<br/>4 anybody from the Office of Public Affairs explain<br/>5 the embargo policies to those in the press room or<br/>6 are they supposed to have a copy of these<br/>7 procedures and be familiar with these procedures?</p> <p>8 A. The members of the Treasury press room<br/>9 are familiar with the lock down procedure.</p> <p>10 Q. They are expected to be familiar with<br/>11 the procedures?</p> <p>12 A. Yes.</p> <p>13 Q. Does anybody from your office explain<br/>14 to them this new embargo policy?</p> <p>15 A. I'm sure there were discussions with<br/>16 members of the press and people in our press room<br/>17 at this time back then about the procedures.</p> <p>18 Q. But as a matter of practice today,<br/>19 does anybody at Treasury explain to them the<br/>20 policy only the day of the press conference?</p> <p>21 A. They announce the embargo in the<br/>22 beginning before they hand anything out.</p> | <p>1 A. Yes.</p> <p>2 Q. And Tony Fratto says, "I wasn't sure<br/>3 if you saw this already." But then he has an<br/>4 attached, what looks like an attached article,<br/>5 correct?</p> <p>6 A. Yes.</p> <p>7 Q. Have you seen this E-mail before?</p> <p>8 A. Not since then.</p> <p>9 Q. It's a Bloomberg article. I'll<br/>10 represent to you that it's a Bloomberg article.<br/>11 "Goldman says no basis for charges over bond<br/>12 trading." Do you see that?</p> <p>13 A. Yes.</p> <p>14 Q. Now, down at the, do you see where it<br/>15 says anticipation and confusion in the middle of<br/>16 that article?</p> <p>17 A. Yes.</p> <p>18 Q. A couple of paragraphs --</p> <p>19 MR. ROSSETTI: The one attributed to<br/>20 Henry Paulson, the former CEO of Goldman Sachs?</p> <p>21 BY MR. THEODOROU:</p> <p>22 Q. Correct. Do you see where it's the</p>                     |

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| <p style="text-align: right;">Page 154</p> <p>1 third paragraph there, "There was a lot of<br/>2 anticipation and confusion surrounding the 30 year<br/>3 auction," said Paulson, who was the chairman of<br/>4 Goldman Sachs at the time described the call to<br/>5 the firm you see as on an unsolicited basis. Do<br/>6 you see that?<br/>7 A. Yes.<br/>8 Q. Do you agree with that statement that<br/>9 there was a lot of anticipation and confusion<br/>10 surrounding the ending of the 30-year auction?<br/>11 MR. ROSSETTI: Objection.<br/>12 A. I mean, there was a lot of<br/>13 anticipation. Yes.<br/>14 BY MR. THEODOROU:<br/>15 Q. And do you agree that there was a lot<br/>16 of confusion surrounding what happened on October<br/>17 31st?<br/>18 MR. ROSSETTI: Objection.<br/>19 A. Yes. In the building. Yes.<br/>20 BY MR. THEODOROU:<br/>21 Q. There was confusion at Treasury,<br/>22 correct?</p>   | <p style="text-align: right;">Page 156</p> <p>1 Treasury as assistant secretary of public affairs<br/>2 you were working for Congress; is that correct?<br/>3 A. Right.<br/>4 Q. And can you explain for me what it<br/>5 was, what was your job at Congress?<br/>6 A. I was communications director for the<br/>7 majority leader in the house.<br/>8 Q. I'm sorry?<br/>9 A. Communications director for the house<br/>10 majority leader.<br/>11 Q. How long did you have that position?<br/>12 A. Six years.<br/>13 Q. What was your responsibilities as the<br/>14 communications director to the house majority<br/>15 leader?<br/>16 A. Manage all of his interactions with<br/>17 the press, keeping the press informed on the house<br/>18 floor schedule and floor votes and legislation<br/>19 meetings through the house.<br/>20 Q. Did you have a staff?<br/>21 A. Yes.<br/>22 Q. How many people were on your staff?</p>   |
| <p style="text-align: right;">Page 155</p> <p>1 A. Yes.<br/>2 MR. THEODOROU: I don't have any<br/>3 further -- well, give me 2 minutes off the record<br/>4 to check my notes. Okay.<br/>5 THE VIDEO OPERATOR: Off the record at<br/>6 3:46:51. On the record at 3:51:16.<br/>7 MR. THEODOROU: No further questions at<br/>8 this time.<br/>9 THE VIDEO OPERATOR: This concludes<br/>10 tape 2 in the deposition of Michele Davis. Off<br/>11 the record at 3:51:33.<br/>12 This begins tape 3 in the deposition of<br/>13 Michele Davis on the record at 3:52:09.<br/>14 CROSS EXAMINATION<br/>15 BY MR. ROSSETTI:<br/>16 Q. Good afternoon, Ms. Davis. My name is<br/>17 John Rossetti, and I represent the plaintiff's,<br/>18 Securities and Exchange Commission. I'm just<br/>19 going to be asking you some follow up questions<br/>20 based on what Mr. Theodorou was asking you.<br/>21 You had explained your employment history<br/>22 earlier and you explained prior to joining the</p> | <p style="text-align: right;">Page 157</p> <p>1 A. Just two.<br/>2 Q. And did you have interaction with the<br/>3 press over that six-year period of time?<br/>4 A. Yes. Constantly.<br/>5 Q. Would you say it was on a daily basis?<br/>6 A. Every day. Yes.<br/>7 Q. And you also said that during that<br/>8 position you dealt with the use of embargoed<br/>9 information, correct?<br/>10 A. Yes.<br/>11 Q. Can you, please, explain for us what<br/>12 your involvement of using embargoed information<br/>13 was during that six-year period of time?<br/>14 MR. THEODOROU: Objection.<br/>15 A. Again, it was a matter of managing the<br/>16 deadline times, so if something was happening in<br/>17 the evening and we wanted to make sure that the<br/>18 reporters had it before so they could get it in<br/>19 the paper, get you to put out something embargoed<br/>20 a couple of hours ahead of time so they could have<br/>21 it, write their stories and then it would be in<br/>22 the paper the next day after the embargo was over.</p> |

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| <p style="text-align: right;">Page 158</p> <p>1 Other times when you have some announcement</p> <p>2 that was at a certain time but you wanted to make</p> <p>3 sure the reporters that you talked to them ahead</p> <p>4 of the announcement, give them background</p> <p>5 information, embargo that, so they couldn't use it</p> <p>6 until the announcement was made.</p> <p>7 BY MR. ROSSETTI:</p> <p>8 Q. Generally, what was the deadline that</p> <p>9 the media had on a nightly basis?</p> <p>10 A. It depends on the media and television</p> <p>11 has no deadlines.</p> <p>12 Q. To print?</p> <p>13 A. Print could be anywhere from 8 o'clock</p> <p>14 at night to 11 o'clock at night depending on which</p> <p>15 one. Nightly news obviously is nightly news so</p> <p>16 5:30, 6 o'clock, the network news. It depended on</p> <p>17 the reporter.</p> <p>18 Q. When was -- is it in that job when you</p> <p>19 were the communications director for the house,</p> <p>20 the majority leader that you learned what an</p> <p>21 embargo was as it related to press information?</p> <p>22 A. Yes.</p> | <p style="text-align: right;">Page 160</p> <p>1 embargoed information while you were, the six</p> <p>2 years that you were worked at the Congress?</p> <p>3 A. Not as often as at Treasury. I can't</p> <p>4 even -- it's hard to gave a ballpark because</p> <p>5 things out there are very driven by the</p> <p>6 legislative calendar, so the office in the month</p> <p>7 of August there's nothing, then there's busy</p> <p>8 months of September and October when things happen</p> <p>9 24 hours a day, so it kind of depended on the</p> <p>10 circumstances.</p> <p>11 Q. Can you explain for me what was the</p> <p>12 procedure that you used as member of Congress --</p> <p>13 well, not, working for the staff of Congress, what</p> <p>14 was the procedures you used for the embargo there?</p> <p>15 MR. THEODOROU: Objection.</p> <p>16 A. You would put it on the, if it was a</p> <p>17 paper release that you were handing out, you would</p> <p>18 write it up on the top of the release or if it was</p> <p>19 a conversation one or more with a reporter, you</p> <p>20 just state it at the beginning of the</p> <p>21 conversation.</p> <p>22 BY MR. ROSSETTI:</p> |
| <p style="text-align: right;">Page 159</p> <p>1 Q. How did you learn that?</p> <p>2 A. Well, when I was first in that office</p> <p>3 I wasn't the communications director the whole six</p> <p>4 years, I was the press secretary of communications</p> <p>5 director. He ran the office the first year and a</p> <p>6 half I was there, so I was mostly learning from</p> <p>7 him and learning from other people I worked with.</p> <p>8 Q. Who was that?</p> <p>9 A. Ed Galleby.</p> <p>10 Q. So of the six years, so four and a</p> <p>11 half of those you were actually a communications</p> <p>12 director?</p> <p>13 A. Yes.</p> <p>14 Q. And for the first half you were press</p> <p>15 secretary?</p> <p>16 A. Press secretary.</p> <p>17 Q. What were your duties as press</p> <p>18 secretary?</p> <p>19 A. Second to him, just same duties,</p> <p>20 talked to press every day, but, you know, just we</p> <p>21 do a lot of things together.</p> <p>22 Q. How often was it that you dealt with</p>  | <p style="text-align: right;">Page 161</p> <p>1 Q. So did when you used the embargo, was</p> <p>2 it ever in Congress, was it in the setting of like</p> <p>3 a press conference or was it just basically one on</p> <p>4 one?</p> <p>5 A. Usually one on one interviews or</p> <p>6 handing out paper.</p> <p>7 Q. I see. Was there any lock down</p> <p>8 utilized when you worked on the Hill?</p> <p>9 A. No.</p> <p>10 Q. And when you worked on the Hill or</p> <p>11 when you explained to a reporter that I'll give</p> <p>12 you this information but it's embargoed, did you</p> <p>13 have a reporter ask you what's embargoed</p> <p>14 information?</p> <p>15 A. No.</p> <p>16 Q. Did you ever have any reporters while</p> <p>17 you worked on the Hill express any confusion to</p> <p>18 you about what the embargo was?</p> <p>19 A. No.</p> <p>20 Q. Did you have any written procedures on</p> <p>21 the Hill of how you would implement the embargo</p> <p>22 you were utilizing?</p>   |

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|---|--|
| <p>1 A. No.</p> <p>2 Q. Why is that?</p> <p>3 A. It's a widely understood practice in</p> <p>4 the media.</p> <p>5 Q. In the six years you were on the Hill,</p> <p>6 did you ever have any instances where another</p> <p>7 reporter came to you and said, you know, working</p> <p>8 with somebody else here and they don't seem to</p> <p>9 understand what your embargo means?</p> <p>10 MR. THEODOROU: Objection.</p> <p>11 A. No.</p> <p>12 BY MR. ROSSETTI:</p> <p>13 Q. Did you have any instance on the Hill</p> <p>14 where you thought that there was some</p> <p>15 misunderstanding about what the embargo meant;</p> <p>16 misunderstanding between you and any number of the</p> <p>17 media?</p> <p>18 A. No, never.</p> <p>19 Q. Now, you left the Hill and then you</p> <p>20 went to the Treasury as the assistant secretary,</p> <p>21 correct?</p> <p>22 A. Right.</p>   | <p>1 the most part.</p> <p>2 Q. Did you, in fact, supervise him even</p> <p>3 though he had -- did he have the title -- let me</p> <p>4 withdraw that. Did he have the title of acting</p> <p>5 assistant secretary?</p> <p>6 A. I'm not sure. I don't remember.</p> <p>7 Q. Were you actually supervising him</p> <p>8 during that seven-month period of time?</p> <p>9 MR. THEODOROU: Objection.</p> <p>10 A. Technically, I was just there as a</p> <p>11 consultant.</p> <p>12 BY MR. ROSSETTI:</p> <p>13 Q. Right. But in practice, were you</p> <p>14 supervising him?</p> <p>15 A. Right. In the Public Affairs</p> <p>16 Department.</p> <p>17 Q. You were?</p> <p>18 A. Yes.</p> <p>19 Q. Okay. And you explained to</p> <p>20 Mr. Theodorou that your predecessor, Michelle</p> <p>21 Smith, spent some time with you on a transition</p> <p>22 period; is that right?</p>   |
| Page 163  | Page 165   |
| <p>1 Q. And you explained that you got</p> <p>2 confirmed and took your position officially in</p> <p>3 August of '01 but that you were at Treasury</p> <p>4 starting in January?</p> <p>5 A. Right.</p> <p>6 Q. Is that right. During that period</p> <p>7 from January to August, you were an acting</p> <p>8 secretary at that time?</p> <p>9 A. No. I was officially, I was there as</p> <p>10 a consultant in the department.</p> <p>11 Q. Was there anybody who was the acting</p> <p>12 assistant secretary at that time?</p> <p>13 A. My deputy or I hired someone to be the</p> <p>14 deputy assistant secretary and he was the</p> <p>15 acting -- he was technically the acting, just</p> <p>16 waiting for me to be confirmed.</p> <p>17 Q. Who was that?</p> <p>18 A. Rob Nichols.</p> <p>19 Q. So Rob Nichols was basically caretaker</p> <p>20 for your position for the seven months it took for</p> <p>21 you to get confirmed?</p> <p>22 A. While I was there doing the job for</p> | <p>1 A. Yes.</p> <p>2 Q. How long did that period of time last,</p> <p>3 that transition period?</p> <p>4 A. She and I met probably several times</p> <p>5 over the first month and, you know, it wasn't a</p> <p>6 set period of time, we just got together several</p> <p>7 times over the first month and then talked on the</p> <p>8 phone, you know, there wasn't a regularly</p> <p>9 scheduled thing.</p> <p>10 Q. When was it that you started having</p> <p>11 any discussions with Michelle Smith --</p> <p>12 A. Probably the first or second --</p> <p>13 Q. Let me withdraw that. President Bush</p> <p>14 came into office January 20st, 2000, correct?</p> <p>15 A. Right. And I started --</p> <p>16 Q. 2001. I'm sorry?</p> <p>17 A. I started at Treasury one week later</p> <p>18 and within a few -- she made contact very soon</p> <p>19 just to offer to break me through up on anything</p> <p>20 and we got together probably within the first</p> <p>21 several days I'm sure.</p> <p>22 Q. So after Bush was inaugurated she</p> |

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|---|--|
| <p>1 stayed in that position --</p> <p>2 A. No. She left the day of the</p> <p>3 inauguration, she was not there at all. She had</p> <p>4 left and I was there but she would come in and</p> <p>5 just to meet with me and walk me through things.</p> <p>6 Q. I see. And how was that arranged for</p> <p>7 her to come in after President Bush --</p> <p>8 A. She called and offered and I set up</p> <p>9 meetings.</p> <p>10 Q. And how many hours do you think it was</p> <p>11 that you met with her?</p> <p>12 MR. THEODOROU: Objection.</p> <p>13 A. It's very hard to remember. I</p> <p>14 don't -- I mean, I know her very well now because</p> <p>15 so many years later, but it's hard to remember</p> <p>16 exactly then.</p> <p>17 Q. What types of information were you and</p> <p>18 she exchanging?</p> <p>19 A. Everything from standard practice on</p> <p>20 the dealing with the press room guys and the guys</p> <p>21 who worked down there in the building, their</p> <p>22 access across the building, things like that, the</p>  | <p>1 actually a room inside of Treasury where media</p> <p>2 personnel can go and use as their office?</p> <p>3 A. Yes.</p> <p>4 Q. The other assignments only certain</p> <p>5 press can go into that press room or how does that</p> <p>6 work?</p> <p>7 MR. THEODOROU: Objection.</p> <p>8 A. There are -- different media</p> <p>9 organizations have to apply for a desk in that</p> <p>10 room and then they can assign a couple of, it</p> <p>11 depends on the organization, they'll assign one,</p> <p>12 two or three reporters to work out of that desk</p> <p>13 which the desk that I was manned and then those</p> <p>14 reporters have hard passes to get in and out of</p> <p>15 the building.</p> <p>16 Q. Just getting back to your discussions</p> <p>17 with Michelle Smith, what if any discussion did</p> <p>18 you have with her about the embargo policy that</p> <p>19 the Treasury had used or was using?</p> <p>20 A. I don't recall specific conversation</p> <p>21 on about that and we talked about the way that</p> <p>22 everything about the way she delivered information</p>  |
| Page 167  | Page 169   |
| <p>1 new website, how to -- one thing I had never done</p> <p>2 before was have traveling press go on an</p> <p>3 international trip with us, so we spent a lot of</p> <p>4 time on that and how that all works, just kind of</p> <p>5 walked me through the mechanics of reporters</p> <p>6 traveling with the secretary and then very much</p> <p>7 just the mechanics of the building. Because</p> <p>8 obviously, I didn't need to be briefed on any of</p> <p>9 the policy positions because it was a new</p> <p>10 administration so it was just mechanics.</p> <p>11 Q. Right. You mentioned there was a</p> <p>12 press room, that was the room in the --</p> <p>13 A. It was a room in the basement of the</p> <p>14 building where reporters work.</p> <p>15 Q. What you need to do is wait for me to</p> <p>16 finish my question, you might be anticipating what</p> <p>17 it is --</p> <p>18 A. Sorry.</p> <p>19 Q. -- and you might be correct, but for</p> <p>20 purposes of making sure we have a clear record</p> <p>21 here, you need to let me finish. Okay. You</p> <p>22 explained there was a press room. There's</p> | <p>1 to the press room. So I'm sure we walked through</p> <p>2 it, but I don't, nothing sticks out in my memory</p> <p>3 about particular practice on embargoes. She just</p> <p>4 explained that they bring down information on a</p> <p>5 embargo basis and that is respected.</p> <p>6 Q. Let me ask you this: What were the</p> <p>7 different ways that Treasury -- let me withdraw</p> <p>8 that. How was it -- what did Michelle Smith</p> <p>9 explain to you in terms of how the Treasury</p> <p>10 released information to the media?</p> <p>11 MR. THEODOROU: Objection.</p> <p>12 A. Again, it depends on the information,</p> <p>13 but there are a lot of standard releases, whether</p> <p>14 they're monthly or quarterly of data that are</p> <p>15 simply hand-delivered on paper to that room with</p> <p>16 an embargo set by the room itself.</p> <p>17 Most of the time the reporters in the room</p> <p>18 while a Treasury person is there before they hand</p> <p>19 it out will say okay, here we are. I'm about to,</p> <p>20 I have got the X, Y, Z data today and they would</p> <p>21 all gather and look at their watches and set an</p> <p>22 embargo and they would hand out the paper and they</p> |

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|--|---|
| <p>1 would all, you know, write the stories in time for</p> <p>2 the embargoes.</p> <p>3 BY MR. ROSSETTI:</p> <p>4 Q. Would it be fair to say that depending</p> <p>5 to type of information that's being released,</p> <p>6 there's a different way that the information is</p> <p>7 actually released to the media?</p> <p>8 MR. THEODOROU: Objection.</p> <p>9 A. Definitely. I mean, data things that</p> <p>10 like that were much it's more of a -- there's</p> <p>11 nothing really for anyone to say. It's just a</p> <p>12 matter of going down there and handing them</p> <p>13 something procedurally. Other times I or someone</p> <p>14 on my staff directly or if we were handing out</p> <p>15 testimony and speeches, things like that that they</p> <p>16 have an embargoed just because we want them to</p> <p>17 have it and be able to read it and post it and</p> <p>18 write their stories the moment the secretary</p> <p>19 starts speaking, those aren't necessarily news</p> <p>20 making, but the embargo is set just to be equal</p> <p>21 with the time that it marks.</p> <p>22 BY MR. ROSSETTI:</p> | <p>1 If it was a press conference about leaving on a</p> <p>2 foreign trip and having a press conference</p> <p>3 beforehand to talk about it, there was no reason</p> <p>4 to embargo it. Embargo was normally used for</p> <p>5 something that's, something that's market</p> <p>6 sensitive so that everyone gets the information</p> <p>7 out exactly the same time.</p> <p>8 Q. You said the information was market</p> <p>9 sensitive. What do you mean by market sensitive?</p> <p>10 A. Information that other people in the</p> <p>11 building, the policy professionals in the building</p> <p>12 felt would be a value to people trading somewhere</p> <p>13 in the world.</p> <p>14 Q. So once that -- was it that if once</p> <p>15 that information was released, market would trade</p> <p>16 on that information?</p> <p>17 A. Yes.</p> <p>18 MR. THEODOROU: Objection. You got to</p> <p>19 wait until I raise my objections.</p> <p>20 A. Okay.</p> <p>21 BY MR. ROSSETTI:</p> <p>22 Q. Did anyone explain to you in Treasury</p> |
| Page 171   | Page 173  |
| <p>1 Q. Let me just be clear about how that</p> <p>2 operates, how it operated in 2001 in terms of</p> <p>3 matter of releasing of information. Were there</p> <p>4 press conferences that were actually being held?</p> <p>5 A. We have press conferences in the</p> <p>6 building. Yes.</p> <p>7 Q. There was a discussion earlier about</p> <p>8 treasury refunding conferences, do you recall</p> <p>9 that? You got to answer yes or no.</p> <p>10 A. Yes. I'm sorry.</p> <p>11 Q. In addition to those press</p> <p>12 conferences, were there other press conferences</p> <p>13 held?</p> <p>14 A. Yes.</p> <p>15 Q. Was there a difference, did every</p> <p>16 press conference, regardless of whether it was</p> <p>17 just run-of-the-mill press conference or a special</p> <p>18 Treasury refunding conference, did they all use</p> <p>19 embargoes?</p> <p>20 A. No.</p> <p>21 Q. Why not?</p> <p>22 A. It depends on the nature of the event.</p>  | <p>1 what market sensitive meant?</p> <p>2 A. They would just say this is market</p> <p>3 sensitive and you know, we treated all data as --</p> <p>4 we treat every data release as something that is</p> <p>5 being embargoed.</p> <p>6 Q. Just so we're clear, I just want to</p> <p>7 focus on the 2001 time frame?</p> <p>8 A. Okay.</p> <p>9 Q. As opposed to your dealings there now.</p> <p>10 A. I see.</p> <p>11 Q. What was your understanding in 2001</p> <p>12 about what market-sensitive information, what that</p> <p>13 meant?</p> <p>14 A. You mean what that --</p> <p>15 Q. What was your understanding of what</p> <p>16 that meant?</p> <p>17 MR. THEODOROU: Objection.</p> <p>18 MR. ROSSETTI: In 2001.</p> <p>19 A. Again, anything that someone would</p> <p>20 trade on.</p> <p>21 BY MR. ROSSETTI:</p> <p>22 Q. And why was it that -- with regards to</p>  |

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|--|--|
| <p>1 A. Yes. In cases with a lot of data.</p> <p>2 BY MR. ROSSETTI:</p> <p>3 Q. What about with market-sensitive</p> <p>4 information?</p> <p>5 MR. THEODOROU: Objection.</p> <p>6 A. Whenever the Treasury is releasing</p> <p>7 market-sensitive information, we want to have</p> <p>8 procedures in place to make sure that that</p> <p>9 information is released accurately and clearly.</p> <p>10 BY MR. ROSSETTI:</p> <p>11 Q. Are there any other reasons why you</p> <p>12 want to, the Treasury wanted to use an embargo for</p> <p>13 market-sensitive information.</p> <p>14 MR. THEODOROU: Objection.</p> <p>15 A. I think that covers it.</p> <p>16 BY MR. ROSSETTI:</p> <p>17 Q. Other than Treasury wanting it and</p> <p>18 you've indicated the press wanted it, was there</p> <p>19 anybody else who wanted an embargo?</p> <p>20 MR. THEODOROU: Objection.</p> <p>21 A. Not that I can think of.</p> <p>22 BY MR. ROSSETTI:</p> | <p>1 A. Maybe a month later.</p> <p>2 Q. But he was part -- that's what I'm</p> <p>3 asking, who your staff was?</p> <p>4 A. He came on about a month later, Tony</p> <p>5 Fratto a few months after that.</p> <p>6 Q. What about Betsy Holahan?</p> <p>7 A. Betsy was not until the summer.</p> <p>8 Q. Now, did you have conversations with</p> <p>9 your staff about the use of embargoes at the</p> <p>10 Treasury Department?</p> <p>11 MR. THEODOROU: Objection.</p> <p>12 A. We would have conversations about</p> <p>13 specific events and I mean, in the interview</p> <p>14 process in interviewing anybody to come to work</p> <p>15 there was when you would get an assessment of how</p> <p>16 well they understood engaging with the press and</p> <p>17 then, you know, every day we would talk about</p> <p>18 upcoming events and how we would -- how that</p> <p>19 specific event needed to be handled.</p> <p>20 BY MR. ROSSETTI:</p> <p>21 Q. Did you interview Tony Fratto?</p> <p>22 A. Yes.</p> |
| Page 179   | Page 181   |
| <p>1 Q. When you got to Treasury you had a</p> <p>2 staff of people working for you; is that right?</p> <p>3 A. Yes.</p> <p>4 Q. Who was that staff?</p> <p>5 A. When I first got there, all the</p> <p>6 political slots were empty so the staff was only</p> <p>7 the career staff which was the three staff</p> <p>8 assistants and the photographer and two people who</p> <p>9 do the clips.</p> <p>10 Q. Who were they?</p> <p>11 A. You want names of everybody?</p> <p>12 Q. Yes.</p> <p>13 A. Okay. This is a memory test.</p> <p>14 Q. In 2001?</p> <p>15 A. Yes. This is a test. Frances</p> <p>16 Anderson, Sharon Lee, Sam Reese, Bill Robertson,</p> <p>17 Chris Taylor and I cannot remember the other</p> <p>18 assistant's name whose not there anymore. Marie</p> <p>19 Stickler.</p> <p>20 Q. And what about Rob Nichols?</p> <p>21 A. No. I hired him.</p> <p>22 Q. When did he come on?</p>                                   | <p>1 Q. And during his -- this was his job</p> <p>2 interview?</p> <p>3 A. Yes.</p> <p>4 Q. When you interviewed him, did you ask</p> <p>5 him questions about whether he knew about what an</p> <p>6 embargo was?</p> <p>7 MR. THEODOROU: Objection.</p> <p>8 A. I don't recall asking him that</p> <p>9 particular question.</p> <p>10 BY MR. ROSSETTI:</p> <p>11 Q. After you interviewed him, were you</p> <p>12 confident that he understood what the position</p> <p>13 entailed?</p> <p>14 A. Yes.</p> <p>15 MR. THEODOROU: Objection.</p> <p>16 BY MR. ROSSETTI:</p> <p>17 Q. What about, who else did you hire in</p> <p>18 2001 to work underneath you?</p> <p>19 A. That was mostly Rob and Tony, they</p> <p>20 hired the rest of the staff.</p> <p>21 Q. Now, you said you'd have discussions</p> <p>22 about specific events. So let's see if my</p>   |

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| <p style="text-align: right;">Page 174</p> <p>1 market-sensitive information, what was the<br/>2 procedure that you had in place to release that<br/>3 information?<br/>4 MR. THEODOROU: Objection.<br/>5 A. We would take other releases of I<br/>6 guess of data we would take to the press room and<br/>7 release I and give it to them with an embargo.<br/>8 BY MR. ROSSETTI:<br/>9 Q. So you would give it to them and then<br/>10 do what with it in terms of telling them it was an<br/>11 embargo?<br/>12 A. We would either set an embargo on the<br/>13 piece of paper we handed them or go into the room<br/>14 and collectively they would all establish an<br/>15 embargo.<br/>16 Q. So in the first instance, you could<br/>17 have a piece of paper with the information on it<br/>18 that you're releasing and on that, it would say<br/>19 embargo at say, for example, 9 clock; is that<br/>20 correct?<br/>21 A. Yes.<br/>22 Q. What would be the other way, another</p>  | <p style="text-align: right;">Page 176</p> <p>1 walk in with it that they need to set an embargo.<br/>2 BY MR. ROSSETTI:<br/>3 Q. But you wanted it to be embargoed,<br/>4 it's not like you're going down there with<br/>5 nonembargoed information and they're going to set<br/>6 an embargo?<br/>7 A. I mean, they've done that before, too.<br/>8 I mean, there are times when they have if they're<br/>9 talking, they have an interview with the senior<br/>10 official, they will among themselves set an<br/>11 embargo just because none of them want to be last<br/>12 to hit the wire.<br/>13 Q. I see. What is the, why is it that<br/>14 treasury wanted an embargo?<br/>15 MR. THEODOROU: Objection. Asked and<br/>16 answered three times.<br/>17 A. It again, it depends. When there's<br/>18 more information, it depends on the volume of<br/>19 information that you're giving them. An embargo<br/>20 is useful when in a lot of circumstances but it's<br/>21 also useful when there's information that needs to<br/>22 be digested so that you don't just get someone</p> |
| <p style="text-align: right;">Page 175</p> <p>1 matter of doing it?<br/>2 A. It would be to just walk in with a<br/>3 paper and, you know, usually the press room knows,<br/>4 they know when data releases are coming and you're<br/>5 not walk in there with a surprise, it would be to<br/>6 just walk in and say I've got such and such data<br/>7 and they would all kind of finish what they were<br/>8 doing and make sure everyone was ready for it, and<br/>9 then they would among themselves whoever was the<br/>10 most senior reporter in the room would be the buy<br/>11 who everyone looked to and it was like, okay, it's<br/>12 2:06, let the embargo for 2:15 and they would all<br/>13 agree and they would get their paper.<br/>14 Q. So you would tell them that this<br/>15 information is subject to an embargo and then<br/>16 they, among themselves, would agree that this<br/>17 information was going to be embargoed until X<br/>18 time?<br/>19 MR. THEODOROU: Objection.<br/>20 A. It usually didn't even require us to<br/>21 say this is going to be a embargoed. These are<br/>22 regular releases that are, they know as soon as we</p> | <p style="text-align: right;">Page 177</p> <p>1 scanning a piece of paper and throwing something<br/>2 in the wire that's out of context.<br/>3 BY MR. ROSSETTI:<br/>4 Q. And why does -- so would it be fair to<br/>5 say that the Treasury wants orderly dissemination<br/>6 of information it's providing?<br/>7 MR. THEODOROU: Objection.<br/>8 A. To have the information be presented<br/>9 as clearly as possible.<br/>10 BY MR. ROSSETTI:<br/>11 Q. Does the, was the Treasury also<br/>12 concerned that the information being released --<br/>13 that the press was releasing was accurate.<br/>14 MR. THEODOROU: Objection.<br/>15 A. Yes. Accurate and clear.<br/>16 BY MR. ROSSETTI:<br/>17 Q. And those are at least two reasons for<br/>18 Treasury employing an embargo?<br/>19 A. Yes.<br/>20 MR. THEODOROU: Objection. You got to<br/>21 wait for the objection.<br/>22 MR. ROSSETTI: I'm sorry. Your answer?</p>   |

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|--|---|
| <p>1 understanding is correct, does that mean then if</p> <p>2 you had a specific release, you would then discuss</p> <p>3 how that information was to be released?</p> <p>4 A. Yes. Yes. You know, information to</p> <p>5 be released or a press conference to hold for one</p> <p>6 to announce one thing or another. Every time</p> <p>7 there was some information to be made public, we</p> <p>8 would have a discussion about is the best way a</p> <p>9 paper release, is this something we want to do at</p> <p>10 a press conference, is this one that goes to a</p> <p>11 speech, what's the right way to make sure this</p> <p>12 information gets out completely and accurately.</p> <p>13 Q. In 2001, were you involved in</p> <p>14 discussions about how each release would be made?</p> <p>15 MR. THEODOROU: Objection.</p> <p>16 A. I mean, if something was a regular</p> <p>17 weekly or monthly release, we didn't revisit every</p> <p>18 single time unless there was something new and</p> <p>19 unusual about it but other than that yes, that was</p> <p>20 my job.</p> <p>21 BY MR. ROSSETTI:</p> <p>22 Q. Did you -- did you become familiar</p> | <p>1 So we all -- we walked through the process</p> <p>2 in getting ready for it, but I don't recall any a</p> <p>3 lot of specifics about that.</p> <p>4 Q. When you say senior officials, what do</p> <p>5 you mean by that?</p> <p>6 A. Well, I mean, all the political</p> <p>7 appointees. It was new for everybody.</p> <p>8 Q. So because it was new for everyone,</p> <p>9 did everyone wanted to go to this meeting and make</p> <p>10 sure that they knew what the procedures were?</p> <p>11 MR. THEODOROU: Objection.</p> <p>12 A. I mean, I can't speak for their</p> <p>13 motivations but I mean, everybody -- it was, you</p> <p>14 know, like the first time you do anything, you pay</p> <p>15 more attention to how it all works.</p> <p>16 BY MR. ROSSETTI:</p> <p>17 Q. In those meetings, was there a</p> <p>18 situation where you were explaining how it was</p> <p>19 going to be done or did someone explain in those</p> <p>20 meetings or career staff --</p> <p>21 A. Usually --</p> <p>22 Q. Let me finish the question.</p>  |
| Page 183   | Page 185  |
| <p>1 with the Treasury refunding conferences?</p> <p>2 A. Yes.</p> <p>3 Q. How did you become familiar with those</p> <p>4 conferences?</p> <p>5 A. In preparing for the first one.</p> <p>6 Q. When was the first one that you were,</p> <p>7 you had any involvement with?</p> <p>8 A. I'm not going to remember the date,</p> <p>9 but there were two before that one in October.</p> <p>10 Q. So prior to October 31st, 2001 there</p> <p>11 were two prior Treasury refunding conferences</p> <p>12 while you were at the Treasury Department?</p> <p>13 A. Yes.</p> <p>14 Q. What did you do -- what was your</p> <p>15 involvement in learning anything about it or</p> <p>16 preparing for them?</p> <p>17 A. I don't recall specifically, but I'm</p> <p>18 sure we walked through sort of the process for how</p> <p>19 this all, it's a three-day event, there's three</p> <p>20 days of materials released in different events and</p> <p>21 when the first one I was there for was the first</p> <p>22 one that several senior officials were there for.</p>  | <p>1 A. I'm sorry.</p> <p>2 Q. During those meetings, did you explain</p> <p>3 how the information was going to be released?</p> <p>4 A. The approach we took when, the</p> <p>5 approach I took when we first got there on not all</p> <p>6 these issues, but any kind of release was to first</p> <p>7 hear from the career staff what had been done over</p> <p>8 time and what was the standard procedure up until</p> <p>9 then and make sure I understood the standard</p> <p>10 procedure up until, that had been in effect and</p> <p>11 then, you know, just usually we would then just</p> <p>12 ask questions, make sure I understood and then we</p> <p>13 would just usually have discussions about whether</p> <p>14 or not there was anything else we wanted to</p> <p>15 change.</p> <p>16 Q. Did the career staff explain to you</p> <p>17 what their practice had been for the Treasury</p> <p>18 refunding conferences?</p> <p>19 MR. THEODOROU: Objection.</p> <p>20 A. As far as I recall. Yes. I don't</p> <p>21 recall a lot of what they explained but I recall</p> <p>22 walking through it.</p> |

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|---|--|
| <p>1 BY MR. ROSSETTI:</p> <p>2 Q. Did you make any changes to the policy</p> <p>3 that had been in effect for releasing information</p> <p>4 as Treasury refunding conferences?</p> <p>5 A. Not that I recall.</p> <p>6 Q. Were you confident then at that point</p> <p>7 that the procedures in place ensured that there</p> <p>8 was going to be the accurate release of the</p> <p>9 Treasury information?</p> <p>10 A. Past practice was indicated to me that</p> <p>11 those procedures were fine until hindsight later.</p> <p>12 Q. Right. And how long had those</p> <p>13 procedures that had been used at the Treasury</p> <p>14 refunding conferences been in place?</p> <p>15 MR. FREEBORNE: If you know.</p> <p>16 A. I don't know.</p> <p>17 BY MR. ROSSETTI:</p> <p>18 Q. After the first meeting that you had</p> <p>19 with your staff and career people about Treasury</p> <p>20 refunding conferences, did you make it a point</p> <p>21 then to attend these pre meetings for subsequent</p> <p>22 refunding conferences?</p> | <p>1 what was coming up. So we would have had</p> <p>2 conversations at least in that context, if not</p> <p>3 separate from that.</p> <p>4 Q. I see. In terms of the -- withdraw</p> <p>5 that. Other than Tony Fratto, was anybody else</p> <p>6 responsible in your office, directly responsible</p> <p>7 for organizing and coordinating the Treasury</p> <p>8 refunding conference?</p> <p>9 A. The other people were just, you know,</p> <p>10 reporting to Tony as they helped with it.</p> <p>11 Q. And he was responsible for helping to</p> <p>12 coordinate the October 31st, 2001 conference as</p> <p>13 well; is that correct?</p> <p>14 MR. THEODOROU: Objection.</p> <p>15 A. Yes.</p> <p>16 BY MR. ROSSETTI:</p> <p>17 Q. You indicated earlier that you thought</p> <p>18 that you first learned that the bond was going to</p> <p>19 be cancelled a few days before the October 31st</p> <p>20 announcement, correct?</p> <p>21 A. That's my best recollection.</p> <p>22 Q. What was the situation under which you</p>   |
| Page 187  | Page 189   |
| <p>1 A. No. Actually, the first one after we</p> <p>2 completed the first one and it went according to</p> <p>3 plan, that was something that Tony and then later</p> <p>4 Tony and Betsy took on.</p> <p>5 Q. And was Tony given the responsibility</p> <p>6 then to take care of coordinating the release of</p> <p>7 the information at the Treasury refunding</p> <p>8 conferences?</p> <p>9 A. Yes.</p> <p>10 Q. Did you have confidence in his ability</p> <p>11 to handle that responsibility?</p> <p>12 MR. THEODOROU: Objection.</p> <p>13 A. Yes. Yes.</p> <p>14 BY MR. ROSSETTI:</p> <p>15 Q. Did you and he have, outside of these</p> <p>16 preparatory meetings, did you have any meetings</p> <p>17 with him in which he gave you an update on how</p> <p>18 things were going with the upcoming refunding</p> <p>19 conference?</p> <p>20 A. Yes. We had staff meetings on a</p> <p>21 regular basis, if not every day. So anything that</p> <p>22 and always with the entire staff to look ahead at</p>                          | <p>1 learned that the bond was going to be cancelled?</p> <p>2 A. I really don't recall. There was a</p> <p>3 lot and this was, we were still dealing with</p> <p>4 things in the wake of September 11th and there was</p> <p>5 a lot going on. My memory is just that, you know,</p> <p>6 the TBAC had recommended it and I think there had</p> <p>7 been a general assumption in the market and</p> <p>8 everywhere that that was likely to happen because</p> <p>9 it had been recommended, but then because of</p> <p>10 September 11th that was in doubt, and so it was</p> <p>11 kind of something that was a discussion we were</p> <p>12 getting outside the building there was a lot of</p> <p>13 discussion of whether or not and I don't remember</p> <p>14 internally when.</p> <p>15 Q. You just threw a lot of stuff out</p> <p>16 there. I'm not sure it was responsive to the</p> <p>17 question.</p> <p>18 A. I'm sorry. I'm trying to remember</p> <p>19 myself and I just don't.</p> <p>20 Q. I'll ask you follow ups. First off,</p> <p>21 going back to October 31st, 2001, were you</p> <p>22 involved in -- was there anything else going on in</p> |

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|--|--|
| <p>1 Treasury that you were more involved with than</p> <p>2 Treasury refunding conferences?</p> <p>3 MR. THEODOROU: Objection.</p> <p>4 A. Definitely all the aftermath of</p> <p>5 September 11th and the financial markets and the</p> <p>6 beginnings of the Treasury -- the terrorist</p> <p>7 financing investigations doing up all of that.</p> <p>8 BY MR. ROSSETTI:</p> <p>9 Q. Were those things taking up the bulk</p> <p>10 of your time at Treasury then?</p> <p>11 A. Yes.</p> <p>12 Q. And you also recall that there was</p> <p>13 some Anthrax letters sent to the Congress as well</p> <p>14 as NBC News, correct?</p> <p>15 MR. THEODOROU: Objection.</p> <p>16 A. Yes.</p> <p>17 BY MR. ROSSETTI:</p> <p>18 Q. Was there also an Anthrax letter sent</p> <p>19 or thought to be an Anthrax letter sent to the</p> <p>20 Treasury Department?</p> <p>21 A. That rings a bell. I don't recall</p> <p>22 much about it.</p>   | <p>1 correctly?</p> <p>2 A. Yes.</p> <p>3 Q. What do you mean by that?</p> <p>4 A. That it wasn't needed anymore.</p> <p>5 Q. When did they make that</p> <p>6 recommendation?</p> <p>7 A. They make recommendations the</p> <p>8 quarter -- I don't remember when they specifically</p> <p>9 had that one, but they make recommendations every</p> <p>10 quarter and these are made public.</p> <p>11 Q. I thought I also heard you make a</p> <p>12 statement that the market was anticipating that</p> <p>13 the bond would be cancelled. Did I hear that</p> <p>14 correctly?</p> <p>15 A. Again, my recollection is that once</p> <p>16 the advisory committee put out its statement,</p> <p>17 there was an expectation that that would happen</p> <p>18 and then the expectation was in doubt because</p> <p>19 after September 11th and suddenly we were going to</p> <p>20 be more likely to be using deficit financing and</p> <p>21 there were a lot of other operations going on in</p> <p>22 the market to a liquidity and there were a lot of</p>                                  |
| Page 191   | Page 193   |
| <p>1 Q. Now, going back to the bond</p> <p>2 cancellation, you said that the TBAC had</p> <p>3 recommended that. Okay. First of all, I want to</p> <p>4 just put some more flesh on the bone about the</p> <p>5 Treasury borrowing advisory committee. What is</p> <p>6 your understanding of what that committee does?</p> <p>7 A. Just makes recommendations to the</p> <p>8 Department about the functioning of the market and</p> <p>9 the best way to finance the government.</p> <p>10 Q. Is that a statutory committee, meaning</p> <p>11 that's actually a statute that set up that</p> <p>12 Treasury borrowing advisory committee?</p> <p>13 A. I don't even know.</p> <p>14 Q. And it's basically comprises people in</p> <p>15 the market who advice -- who would give any advice</p> <p>16 that the Treasury needs on a particular issue?</p> <p>17 MR. THEODOROU: Objection.</p> <p>18 A. I think that's right.</p> <p>19 BY MR. ROSSETTI:</p> <p>20 Q. Now, you said that the Treasury</p> <p>21 borrowing advisory committee had recommended</p> <p>22 cancellation of the 30-year bond. Did I hear that</p> | <p>1 other focuses.</p> <p>2 Q. So do you recall if it was the July,</p> <p>3 2001 Treasury borrowing advisory committee where</p> <p>4 the committee made its recommendation to cancel</p> <p>5 the bond at that time?</p> <p>6 A. Usually these are recommendations</p> <p>7 quarter to quarter. So I just don't recall the</p> <p>8 exact date, that would be what I would assume.</p> <p>9 Q. But because of the, so the Treasury</p> <p>10 borrowing advisory committee made this</p> <p>11 recommendation to cancel the bond and you've</p> <p>12 explained that because of the events of 911, there</p> <p>13 was a thought that that recommendation wouldn't be</p> <p>14 acted upon because of financing concerns?</p> <p>15 MR. THEODOROU: Objection.</p> <p>16 Q. Is that correct?</p> <p>17 A. That was some of the public discussion</p> <p>18 around the issue at the time.</p> <p>19 BY MR. ROSSETTI:</p> <p>20 Q. Now, again, you said you didn't recall</p> <p>21 the manner in which you learned about the Treasury</p> <p>22 was going to be cancelling the 30-year bond?</p> |

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|--|---|
| <p>1 A. No.</p> <p>2 MR. THEODOROU: Objection.</p> <p>3 BY MR. ROSSETTI:</p> <p>4 Q. And you know Peter Fisher; is that</p> <p>5 correct?</p> <p>6 A. Yes.</p> <p>7 Q. When is it that you first met Peter</p> <p>8 Fisher?</p> <p>9 A. When he was confirmed for the job.</p> <p>10 Q. Did he -- was he at Treasury before he</p> <p>11 was concerned similar to like you were?</p> <p>12 A. Not that I recall.</p> <p>13 Q. When you, did you have a specific</p> <p>14 meeting with him or was it to meet him and discuss</p> <p>15 things with him or was it like a group meeting?</p> <p>16 MR. THEODOROU: Objection. Referring</p> <p>17 to what?</p> <p>18 MR. ROSSETTI: When she first met him.</p> <p>19 A. I don't recall the first meeting I had</p> <p>20 with him, but I met with each new senior official</p> <p>21 as they came on to talk about dealing with the</p> <p>22 press.</p>                | <p>1 information?</p> <p>2 MR. THEODOROU: Objection.</p> <p>3 A. That would have not come up unless we</p> <p>4 were talking about the specific release.</p> <p>5 BY MR. ROSSETTI:</p> <p>6 Q. I see. And were there any specific</p> <p>7 releases dealing with Peter -- that Peter Fisher</p> <p>8 was involved in that you had a conversation with</p> <p>9 him about?</p> <p>10 MR. THEODOROU: About what?</p> <p>11 BY MR. ROSSETTI:</p> <p>12 Q. About that release?</p> <p>13 A. About the quarterly refunding, you</p> <p>14 mean?</p> <p>15 MR. THEODOROU: Objection.</p> <p>16 BY MR. ROSSETTI:</p> <p>17 Q. No. You indicated that you wouldn't</p> <p>18 have had a conversation with Mr. Fisher about the</p> <p>19 embargo procedure at Treasury unless there was an</p> <p>20 event coming up, correct?</p> <p>21 A. Right.</p> <p>22 Q. Do you recall what was, whether there</p>   |
| Page 195   | Page 197  |
| <p>1 BY MR. ROSSETTI:</p> <p>2 Q. I'm sorry.</p> <p>3 A. To talk about how to deal with the</p> <p>4 press and what their role was going to entail in</p> <p>5 terms of dealing with the press.</p> <p>6 BY MR. ROSSETTI:</p> <p>7 Q. You had that conversation with</p> <p>8 Mr. Fisher?</p> <p>9 A. Yes. With every senior official when</p> <p>10 they came on.</p> <p>11 Q. Was anybody else with you from your</p> <p>12 staff or was it just you and he?</p> <p>13 A. I don't recall. There's no reason it</p> <p>14 would have been anyone else.</p> <p>15 Q. Did you have conversations with him</p> <p>16 about the use of embargoed information?</p> <p>17 MR. THEODOROU: Objection.</p> <p>18 A. I doubt it.</p> <p>19 BY MR. ROSSETTI:</p> <p>20 Q. Did you explain to him that embargo --</p> <p>21 that the Treasury Department had an embargo</p> <p>22 procedure in place for the release of any</p> | <p>1 was an event that you discussed the Treasury</p> <p>2 embargo procedure with Mr. Fisher?</p> <p>3 A. I don't -- not that I recall.</p> <p>4 Q. When was it that you first had any</p> <p>5 meetings or discussions with anybody about the</p> <p>6 October 31st, 2001 Treasury refunding conference?</p> <p>7 MR. THEODOROU: Objection.</p> <p>8 A. I don't recall a specific date. My</p> <p>9 recollection is within a couple of days beforehand</p> <p>10 is when we started focussing on the release.</p> <p>11 BY MR. ROSSETTI:</p> <p>12 Q. And was there -- and do you think it's</p> <p>13 that same time when you first had those meetings,</p> <p>14 you think that's when you first learned that the</p> <p>15 bond would be cancelled?</p> <p>16 A. As far as I recall.</p> <p>17 MR. THEODOROU: Objection.</p> <p>18 BY MR. ROSSETTI:</p> <p>19 Q. Were you, and what was your</p> <p>20 involvement in helping to coordinate the refunding</p> <p>21 conference for October 31st, 2001?</p> <p>22 A. Mostly was getting, you know, getting</p> |

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|---|--|
| <p>1 reports from Tony and Betsy about what, how the</p> <p>2 planning was going and chiming in as needed.</p> <p>3 Q. But you were basically letting them</p> <p>4 run the show on that?</p> <p>5 A. Yes.</p> <p>6 Q. As part -- as the secretary of public</p> <p>7 affairs, would it have been your role to review</p> <p>8 press releases, the press release that was going</p> <p>9 to be made for the refunding conference?</p> <p>10 MR. THEODOROU: Objection.</p> <p>11 A. I would normally clear on any release</p> <p>12 going out of the building.</p> <p>13 BY MR. ROSSETTI:</p> <p>14 Q. Including the Treasury refunding</p> <p>15 conference release?</p> <p>16 A. Including Peter Fisher's remarks.</p> <p>17 Yes.</p> <p>18 Q. So the one that was released on</p> <p>19 October 31st, you had seen it before it was</p> <p>20 approved?</p> <p>21 A. I mean, right now I can't recall</p> <p>22 specifically but that would have been practice.</p>   | <p>1 A. What do you mean?</p> <p>2 Q. What was your understanding of how</p> <p>3 information got onto the website?</p> <p>4 MR. FREEBORNE: You mean generally or</p> <p>5 with reference to this?</p> <p>6 MR. THEODOROU: Objection.</p> <p>7 MR. ROSSETTI: Generally for any press</p> <p>8 items.</p> <p>9 A. At the time, there was a specific</p> <p>10 software thing that had to be on that you had to</p> <p>11 have access to put something on our website and</p> <p>12 that was at two desks in the office and, you know,</p> <p>13 there was a complicated process for uploading text</p> <p>14 and putting it on the website.</p> <p>15 BY MR. ROSSETTI:</p> <p>16 Q. You weren't involved in that, though?</p> <p>17 A. No.</p> <p>18 Q. I see. At some point there was a</p> <p>19 decision made to use an embargo at the October</p> <p>20 31st, 2001 refunding conference; is that fair to</p> <p>21 say?</p> <p>22 MR. THEODOROU: Objection.</p> |
| Page 199  | Page 201   |
| <p>1 Q. I see. And who had the final say on</p> <p>2 the final version?</p> <p>3 MR. FREEBORNE: In terms of what?</p> <p>4 MR. ROSSETTI: Of the release.</p> <p>5 MR. THEODOROU: Objection.</p> <p>6 A. Of the text or of the?</p> <p>7 BY MR. ROSSETTI:</p> <p>8 Q. Of anything in it. Did you, was there</p> <p>9 an area where public affairs had the final say on</p> <p>10 one aspect of it and Office of Domestic Finance</p> <p>11 had a say on another part of it?</p> <p>12 A. No. It gets cleared by everybody who</p> <p>13 needs to clear on it and release equities on the</p> <p>14 issue as text and then it gets formatted in the</p> <p>15 public affairs office for release.</p> <p>16 Q. You weren't involved in the -- let me</p> <p>17 ask, were you involved in the formatting of it at</p> <p>18 all?</p> <p>19 A. No.</p> <p>20 Q. And what was your understanding of how</p> <p>21 your understanding, if any, of how information was</p> <p>22 posted on the Treasury Department website?</p> | <p>1 A. Yes.</p> <p>2 BY MR. ROSSETTI:</p> <p>3 Q. And who made that decision?</p> <p>4 A. It would have been a collective</p> <p>5 decision between Peter Fisher, his staff and my</p> <p>6 staff.</p> <p>7 Q. Do you recall there being any</p> <p>8 discussion that Peter Fisher wanted to do it in</p> <p>9 some other manner that didn't have an embargo?</p> <p>10 MR. THEODOROU: Objection.</p> <p>11 A. Not that I recall.</p> <p>12 MR. ROSSETTI: Let me have this marked</p> <p>13 as Exhibit 14.</p> <p>14 (Deposition Exhibit No. 14 was marked for</p> <p>15 identification.)</p> <p>16 BY MR. ROSSETTI:</p> <p>17 Q. And Ms. Davis, I have asked the Court</p> <p>18 Reporter to hand you what's been marked Exhibit</p> <p>19 14, and I'm asking you to read through, there's a</p> <p>20 series of E-mails here. It has a Bate stamp</p> <p>21 number on it FOIAKBC 613, it's series of E-mails</p> <p>22 from October 29, 2001.</p>               |

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|--|---|
| <p>1 A. Yes.</p> <p>2 Q. Do you see the first E-mail, it's from</p> <p>3 Betsy Holahan to you Tony Fratto, Rob Nichols and</p> <p>4 a number of people on the CC line. Do you see</p> <p>5 that?</p> <p>6 A. Yes.</p> <p>7 Q. The people that are on the CC line,</p> <p>8 are those people who are in the Office of Domestic</p> <p>9 Finance?</p> <p>10 A. Yes.</p> <p>11 Q. And you'll see that there's a schedule</p> <p>12 for October 31st, 2001. Do you see that?</p> <p>13 A. Yes.</p> <p>14 Q. Then you go to there's a second E-mail</p> <p>15 from Betsy Holahan to you, Fratto and Rob Nichols</p> <p>16 again?</p> <p>17 A. Yes.</p> <p>18 Q. With a number of people CCed from</p> <p>19 Office of Domestic Finance. And Betsy writes,</p> <p>20 "Okay, Tony and I just spoke with Peter and he</p> <p>21 agreed to embargo on the announcement until 10</p> <p>22 a.m. That means the announcement occurs at 9 to</p>                                   | <p>1 A. Yes.</p> <p>2 Q. Again, there was the first E-mail</p> <p>3 here, from Betsy Holahan it the same one that was</p> <p>4 on the previous exhibit and there's a second</p> <p>5 E-mail discussing about some reporters and then</p> <p>6 there's an E-mail from Tony Fratto at 1:45 p.m. to</p> <p>7 you, Betsy Holahan and Rob Nichols. And Tony</p> <p>8 states, "FYI, Betsy and I talked Peter out of</p> <p>9 going live on Wednesday. Press conference will</p> <p>10 end at 9:40 with a 10 a.m. embargo. He will then</p> <p>11 come back at 10:10 for background." Do you see</p> <p>12 that?</p> <p>13 A. Yes.</p> <p>14 Q. Does this refresh your memory at all</p> <p>15 that apparently Peter Fisher wanted to have a live</p> <p>16 press conference rather than an embargo for this</p> <p>17 refunding information?</p> <p>18 MR. THEODOROU: Objection.</p> <p>19 A. I mean, that's certainly what this</p> <p>20 indicates but I just don't recall any of that</p> <p>21 discussion.</p> <p>22 BY MR. ROSSETTI:</p> |
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| <p>1 9:15, Q and A until 9:40 and then the embargo</p> <p>2 lifted at 10 a.m. No live TV. Peter will later</p> <p>3 be available for background questions perhaps at</p> <p>4 10:15 a.m."</p> <p>5 Were you aware that whether Peter Fisher</p> <p>6 wanted the release of information on this</p> <p>7 refunding conference other than using an embargo?</p> <p>8 MR. THEODOROU: Objection.</p> <p>9 A. I don't recall that.</p> <p>10 BY MR. ROSSETTI:</p> <p>11 Q. Does this E-mail refresh your memory</p> <p>12 at all?</p> <p>13 MR. THEODOROU: Objection.</p> <p>14 A. I don't recall that being an issue.</p> <p>15 It may have been but.</p> <p>16 MR. ROSSETTI: 15, please.</p> <p>17 (Deposition Exhibit No. 15 was marked for</p> <p>18 identification.)</p> <p>19 BY MR. ROSSETTI:</p> <p>20 Q. Exhibit 15 is another series of</p> <p>21 E-mails from October 29, 2001 and this is FOIAKBC</p> <p>22 Exhibit No. 612 in the lower right-hand corner?</p> | <p>1 Q. Do you have any reason to believe to</p> <p>2 think that this information that Tony Fratto was</p> <p>3 indicating here is not accurate?</p> <p>4 A. No.</p> <p>5 Q. Do you have any reason to believe that</p> <p>6 the information that Betsy Holahan indicated in</p> <p>7 her E-mail on Exhibit 14, the E-mail at 10:48 --</p> <p>8 1:48 p.m. is not correct?</p> <p>9 A. No.</p> <p>10 Q. At the time of the refunding</p> <p>11 conference on October 31st, 2001, were you in your</p> <p>12 office or were you out traveling have?</p> <p>13 A. I don't recall. I'm not sure.</p> <p>14 Q. Now, it's my understanding, correct,</p> <p>15 that you had not attended any of the refunding</p> <p>16 conferences from the time you started Treasury in</p> <p>17 January of '01 up through October 31st, 2001?</p> <p>18 A. Right.</p> <p>19 Q. Did anyone explain to you how they</p> <p>20 ran?</p> <p>21 MR. THEODOROU: Objection.</p> <p>22 A. Like I said, we talked it through at</p>                                |

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| <p>1 the beginning before the first one, it appears we</p> <p>2 kind of walked through here's how it goes.</p> <p>3 BY MR. ROSSETTI:</p> <p>4 Q. Now, you had indicated earlier --</p> <p>5 MR. THEODOROU: Indicated or testified?</p> <p>6 MR. ROSSETTI: She probably did both,</p> <p>7 indicated and testified. Bear with me one moment.</p> <p>8 BY MR. ROSSETTI:</p> <p>9 Q. In response to some questions from Mr.</p> <p>10 Theodorou about who was responsible for deciding</p> <p>11 who attends press conferences, you indicated it</p> <p>12 was the Office of Public Affairs and the Office of</p> <p>13 Domestic Finance; is that correct?</p> <p>14 A. To attend that particular press</p> <p>15 conference; is that what you're asking about that</p> <p>16 particular one?</p> <p>17 Q. The Treasury refunding conferences?</p> <p>18 A. Yes.</p> <p>19 Q. And as far as the, was there then</p> <p>20 responsibility -- how is the responsibility</p> <p>21 divided between public affairs who public affairs</p> <p>22 would decide could attend and who domestic finance</p> | <p>1 was there for laid out this is the standard</p> <p>2 practice and there was not a discussion or</p> <p>3 decision to change that.</p> <p>4 Q. Was it explained that people from the</p> <p>5 Federal Reserve or The White House had come to</p> <p>6 these conferences in the past?</p> <p>7 MR. THEODOROU: Objection.</p> <p>8 A. I don't recall that. But it doesn't</p> <p>9 mean. I just don't recall that.</p> <p>10 BY MR. ROSSETTI:</p> <p>11 Q. Was there discussions that no one from</p> <p>12 outside of Treasury could attend this conference?</p> <p>13 MR. THEODOROU: Objection.</p> <p>14 A. That discussion as I recall it was</p> <p>15 this is for reporters only.</p> <p>16 BY MR. ROSSETTI:</p> <p>17 Q. But you don't recall any discussion</p> <p>18 that practice was, there were some people from the</p> <p>19 outside who could attend?</p> <p>20 A. I don't recall that.</p> <p>21 MR. THEODOROU: Objection.</p> <p>22 BY MR. ROSSETTI:</p> |
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| <p>1 decided could attend?</p> <p>2 MR. THEODOROU: Objection.</p> <p>3 MR. FREEBORNE: I think that</p> <p>4 mischaracterize her testimony, but.</p> <p>5 A. It's not like a separate, it's not</p> <p>6 like there's one list or another list or anything</p> <p>7 like that.</p> <p>8 BY MR. ROSSETTI:</p> <p>9 Q. Let me restate the question. Is it</p> <p>10 your testimony earlier that you said that it was</p> <p>11 in terms of who could attend the Treasury</p> <p>12 refunding conferences it was the responsibility of</p> <p>13 the Office of Public Affairs and the Office of</p> <p>14 Domestic Finance?</p> <p>15 MR. THEODOROU: Objection.</p> <p>16 BY MR. ROSSETTI:</p> <p>17 Q. Do I have that correct?</p> <p>18 A. To determine it together. One joint</p> <p>19 decision, not two separate lists of people.</p> <p>20 Q. And when was that joint decision made?</p> <p>21 A. Well, again, the standard practice</p> <p>22 that we walk through before the first one that I</p>   | <p>1 Q. You don't recall that at all?</p> <p>2 A. No.</p> <p>3 Q. Do you know who actually was attending</p> <p>4 those quarterly refunding conferences?</p> <p>5 MR. THEODOROU: Objection.</p> <p>6 A. Do I personally know who?</p> <p>7 Q. Right?</p> <p>8 A. No, I didn't know who.</p> <p>9 BY MR. ROSSETTI:</p> <p>10 Q. Do you have any knowledge of who was</p> <p>11 attending?</p> <p>12 MR. THEODOROU: Objection.</p> <p>13 MR. FREEBORNE: Are we talking about</p> <p>14 the October 31st refunding or any other refunding?</p> <p>15 MR. ROSSETTI: Yes.</p> <p>16 MR. FREEBORNE: Person by person or</p> <p>17 entity by entity?</p> <p>18 MR. ROSSETTI: Person by person start.</p> <p>19 A. Do I personally know?</p> <p>20 MR. ROSSETTI: Right.</p> <p>21 A. No.</p> <p>22 BY MR. ROSSETTI:</p>   |

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|--|---|
| <p>1 Q. What about entities?</p> <p>2 A. No.</p> <p>3 Q. Do you know what practices the Office</p> <p>4 of Domestic Finance had with regards to allowing</p> <p>5 people to attend the Treasury refunding</p> <p>6 conferences?</p> <p>7 A. What practices they have? No.</p> <p>8 BY MR. ROSSETTI:</p> <p>9 Q. You were asked earlier about Peter</p> <p>10 Davis whether you knew him or not. Did you learn</p> <p>11 that he had been permitted by people in the Office</p> <p>12 of Domestic Finance to attend those conferences,</p> <p>13 the Treasury refunding conferences since some time</p> <p>14 in the mid to late '90s?</p> <p>15 MR. THEODOROU: Objection.</p> <p>16 A. I learned that he had been attending</p> <p>17 for some time. I don't remember for how long.</p> <p>18 BY MR. ROSSETTI:</p> <p>19 Q. So this wasn't just a first-time</p> <p>20 occurrence that he came into the building?</p> <p>21 A. Right. I learned that after the fact</p> <p>22 that he had been attending for some time.</p>  | <p>1 BY MR. ROSSETTI:</p> <p>2 Q. Do you know if there were any</p> <p>3 conditions set on his ability to attend?</p> <p>4 A. No.</p> <p>5 Q. Did you ever hear that Roger Anderson</p> <p>6 had told him he could attend if he abided by the</p> <p>7 terms of the press embargo?</p> <p>8 MR. THEODOROU: Objection.</p> <p>9 A. No. I don't even know who that is.</p> <p>10 BY MR. ROSSETTI:</p> <p>11 Q. You never heard there was an</p> <p>12 individual named Roger Anderson who was a</p> <p>13 predecessor of Peter Fisher's years before?</p> <p>14 A. No.</p> <p>15 Q. Do you know if the Office of Domestic</p> <p>16 Finance used any sort of confidentiality agreement</p> <p>17 between it and Peter Davis?</p> <p>18 A. No.</p> <p>19 Q. Based on this meeting you said you had</p> <p>20 about the refunding conferences when you first</p> <p>21 came on board, what was your understanding of how</p> <p>22 the embargo were set at the Treasury refunding</p> |
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| <p>1 MR. THEODOROU: Objection.</p> <p>2 BY MR. ROSSETTI:</p> <p>3 Q. And that was as a result of a practice</p> <p>4 between he and the Office of Domestic Finance?</p> <p>5 MR. THEODOROU: Objection.</p> <p>6 A. The first thing we did after that was</p> <p>7 to look and see who cleared him in and it was not</p> <p>8 through the press office. We didn't -- I didn't</p> <p>9 look past that to see who it was.</p> <p>10 BY MR. ROSSETTI:</p> <p>11 Q. How did you learn that someone from</p> <p>12 the Office to Domestic Finance had allowed Peter</p> <p>13 Davis to attend the refunding conferences?</p> <p>14 A. I just heard that over the next few</p> <p>15 days somewhere in the building that it was someone</p> <p>16 in Domestic Finance who had cleared him in. I</p> <p>17 never heard the name.</p> <p>18 Q. Do you know under what conditions he</p> <p>19 was allowed to enter and attend the quarterly</p> <p>20 refunding conference?</p> <p>21 MR. THEODOROU: Objection.</p> <p>22 A. No.</p> | <p>1 conferences prior to October 31st, 2001?</p> <p>2 MR. THEODOROU: Objection.</p> <p>3 A. I really don't recall.</p> <p>4 BY MR. ROSSETTI:</p> <p>5 Q. Was there a difference in how the</p> <p>6 embargo was set on October 31st, 2001 from the</p> <p>7 prior refunding conferences?</p> <p>8 MR. THEODOROU: Objection.</p> <p>9 MR. FREEBORNE: In terms of time or in</p> <p>10 terms of policy?</p> <p>11 MR. ROSSETTI: In terms of how it was</p> <p>12 set.</p> <p>13 MR. FREEBORNE: In terms of time?</p> <p>14 MR. ROSSETTI: In terms of how it was</p> <p>15 set.</p> <p>16 MR. FREEBORNE: Okay. Procedure.</p> <p>17 A. It was definitely a unique event</p> <p>18 because there was so much more attention for it</p> <p>19 and so like I said, I don't recall what the</p> <p>20 practice exactly was before that but it would have</p> <p>21 been, we would have set this procedure for that</p> <p>22 event based on the much greater news attention</p>         |

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| <p>1 directed at that particular quarterly refunding<br/>2 agreement.<br/>3 BY MR. ROSSETTI:<br/>4 Q. Because it was thought the<br/>5 cancellation of the bond was market-sensitive<br/>6 information?<br/>7 MR. THEODOROU: Objection.<br/>8 A. Or the decision not to cancel it.<br/>9 Whatever the decision was, it was going to be big<br/>10 news because there was so much attention focused<br/>11 on it. So we -- I mean, Peter Fisher and those<br/>12 aren't always done by the under secretary, it was<br/>13 a unique thing to have him do it, it was a, that<br/>14 whole, we treated the entire event as a much<br/>15 higher profile news event than a normal quarterly<br/>16 refunding.<br/>17 BY MR. ROSSETTI:<br/>18 Q. Were you aware on the night before<br/>19 October 30th, 2001 that the treasury issued a<br/>20 press release in which it announced the 10 a.m.<br/>21 embargo and also announced that Peter Fisher would<br/>22 be speaking at the press conference?</p> | <p>1 MR. THEODOROU: Objection.<br/>2 A. No.<br/>3 BY MR. ROSSETTI:<br/>4 Q. Did you ever have conversations in<br/>5 which one reporter told you that he didn't think<br/>6 that another reporter knew what the embargo<br/>7 procedures were?<br/>8 MR. THEODOROU: Objection.<br/>9 A. No.<br/>10 BY MR. ROSSETTI:<br/>11 Q. Did you ever while you were at<br/>12 Treasury in October in 2001, prior to October<br/>13 31st, 2001, did you receive any complaints from<br/>14 anybody that they didn't think somebody was<br/>15 abiding by the terms of the embargo?<br/>16 A. Not that I can recall.<br/>17 Q. Did anyone bring to your attention<br/>18 alleged media violations of the Treasury embargo?<br/>19 MR. THEODOROU: Objection.<br/>20 A. Reporters are constantly trying to<br/>21 point fingers at each other for competitive edge,<br/>22 so I can't leave it out entirely but I don't</p> |
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| <p>1 MR. THEODOROU: Objection.<br/>2 A. I don't recall that specifically but<br/>3 we always let people know about the next day's<br/>4 events.<br/>5 BY MR. ROSSETTI:<br/>6 Q. I see. Did you ever have any<br/>7 conversations with Tony Fratto in which he<br/>8 expressed concern to you that reporters didn't<br/>9 seem to understand what the Treasury procedure<br/>10 was?<br/>11 MR. THEODOROU: Objection --<br/>12 BY MR. ROSSETTI:<br/>13 Q. The Treasury embargo procedure was?<br/>14 MR. THEODOROU: Objection.<br/>15 A. No.<br/>16 Q. Did you have such conversations with<br/>17 Betsy Holahan?<br/>18 A. No.<br/>19 Q. Did you ever have any conversations<br/>20 with reporters with the media at the Treasury<br/>21 Department in which they indicated to you that<br/>22 they did not understand the embargo procedure?</p>   | <p>1 recall anybody specifically raising that.<br/>2 BY MR. ROSSETTI:<br/>3 Q. Do you know of anyone prior to October<br/>4 31st, any media people intentionally violating the<br/>5 Treasury Department embargo.<br/>6 MR. THEODOROU: Objection.<br/>7 A. No.<br/>8 BY MR. ROSSETTI:<br/>9 Q. You were asked some questions about<br/>10 the early posting of the Treasury refunding press<br/>11 release on the Treasury website. Do you recall<br/>12 those?<br/>13 A. Yes.<br/>14 Q. And you said you learned that Frances<br/>15 Anderson had posted it early; is that correct?<br/>16 A. Yes.<br/>17 Q. And Mr. Theodorou showed you some<br/>18 exhibits. Exhibit 10 if you can get that in front<br/>19 of you.<br/>20 A. Yes.<br/>21 Q. You sent an E-mail to some of your<br/>22 colleagues in the public affairs office and the</p>  |

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| <p>1 Office of Domestic Finance and you characterized<br/>2 it as posting was unfortunate and you're<br/>3 apologizing for carelessness in your office.<br/>4 Did you reach any conclusion that the early<br/>5 posting of the information on the website was<br/>6 anything but was just carelessness?<br/>7 MR. THEODOROU: Objection.<br/>8 BY MR. ROSSETTI:<br/>9 Q. As opposed to anything else?<br/>10 A. Carelessness. To this day, I believe<br/>11 it was just carelessness.<br/>12 Q. You didn't conclude there was any<br/>13 intentional wrongdoing on anybody's part regarding<br/>14 that?<br/>15 A. No.<br/>16 Q. Did anyone tell you that they had<br/>17 learned that it was anything but carelessness?<br/>18 MR. THEODOROU: Objection.<br/>19 A. No.<br/>20 BY MR. ROSSETTI:<br/>21 Q. You were asked some questions about<br/>22 the Treasury borrowing advisory committee. Did</p>   | <p>1 with nonemployees about setting forth their use of<br/>2 any information that they learned at Treasury?<br/>3 MR. THEODOROU: Objection.<br/>4 A. Not that I know of. No.<br/>5 BY MR. ROSSETTI:<br/>6 Q. You indicated earlier that you learned<br/>7 that Peter Davis had attended the Treasury<br/>8 refunding conference. How is it you learned that?<br/>9 A. I read it in some wire story, it was<br/>10 the first I heard of it.<br/>11 Q. And you had never heard of Peter Davis<br/>12 prior to that?<br/>13 A. No.<br/>14 Q. Mr. Theodorou was asking you some<br/>15 questions about if you look at Exhibit 7?<br/>16 A. (The witness complies.) Yes.<br/>17 Q. There's some comments attributed to<br/>18 Tony Fratto about thinking it's likely that some<br/>19 of those may have gotten into the conference or<br/>20 his clarification that, quote, I think it is<br/>21 unlikely that others have not gotten into these<br/>22 things in the past.</p> |
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| <p>1 the Office of Public Affairs have any<br/>2 responsibility for the treasury borrowing advisory<br/>3 committee at all?<br/>4 A. Just releasing every quarter their one<br/>5 document at the quarterly refunding -- the day<br/>6 before the quarterly refunding announcement.<br/>7 Q. But did you have any responsibility<br/>8 monitoring what the members of the committee did?<br/>9 A. No. Just that one quarterly release<br/>10 that we did on their behalf.<br/>11 Q. Are you aware of any rules,<br/>12 confidentiality rules that the members of the<br/>13 Treasury borrowing advisory committee have to<br/>14 abide by?<br/>15 MR. THEODOROU: Objection.<br/>16 A. Not that I know of. I don't know<br/>17 anything about them.<br/>18 MR. ROSSETTI: I'm sorry?<br/>19 A. I don't know anything about them.<br/>20 BY MR. ROSSETTI:<br/>21 Q. Were you aware of any sort of<br/>22 confidentiality agreement being used at Treasury</p> | <p>1 Did you have any understanding as to his<br/>2 reference to that whether he was meaning that<br/>3 Peter Davis had been attending these in the past,<br/>4 it just wasn't October 31st, 2001?<br/>5 MR. THEODOROU: Objection.<br/>6 A. I don't know if he was referring<br/>7 particularly to him, and I think as we looked at<br/>8 the, as we in hindsight reviewed the process, it<br/>9 just became clear to us that it could have easily<br/>10 been additional people.<br/>11 BY MR. ROSSETTI:<br/>12 Q. Did you have any conversations with<br/>13 him in which he said I know that there are other<br/>14 people who attended who should not have.<br/>15 MR. THEODOROU: Objection.<br/>16 A. Not that I recall.<br/>17 BY MR. ROSSETTI:<br/>18 Q. Did anyone ever tell you that?<br/>19 A. Not that I recall.<br/>20 Q. Did you ever learn that yourself<br/>21 personally?<br/>22 A. No.</p>   |

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|--|---|
| <p>1 MR. THEODOROU: Objection.</p> <p>2 BY MR. ROSSETTI:</p> <p>3 Q. What's your understanding as to the</p> <p>4 basis of Fratto's statement then that he thinks</p> <p>5 it's unlikely that others have not gotten into the</p> <p>6 Treasury refunding conferences in the past.</p> <p>7 MR. THEODOROU: Objection.</p> <p>8 A. We were all pretty disappointed in</p> <p>9 what we learned about the process once this all</p> <p>10 happened.</p> <p>11 BY MR. ROSSETTI:</p> <p>12 Q. Right. But other than being</p> <p>13 disappointed in the process, did you have any</p> <p>14 information that lead you to believe that other</p> <p>15 people other than Peter Davis were getting into</p> <p>16 the conference.</p> <p>17 MR. THEODOROU: Objection.</p> <p>18 A. No. We were just concerned about the</p> <p>19 whole process that would have allowed other</p> <p>20 people.</p> <p>21 BY MR. ROSSETTI:</p> <p>22 Q. Getting back to the issue of the</p> | <p>1 A. Yes.</p> <p>2 Q. In your interaction, your experiences</p> <p>3 with the interactions of the press you were</p> <p>4 covering in the Treasury Department, did you have</p> <p>5 any reason -- did you think it was necessary at</p> <p>6 all to explain to them what an embargo meant?</p> <p>7 MR. THEODOROU: Objection.</p> <p>8 A. No.</p> <p>9 BY MR. ROSSETTI:</p> <p>10 Q. Let me ask you to look at Exhibit 5.</p> <p>11 A. (The witness complies.)</p> <p>12 Q. There's this E-mail from Timothy</p> <p>13 Bitsberger at 3:19 p.m. Do you see that?</p> <p>14 A. Yes.</p> <p>15 Q. And there's a whole area that's</p> <p>16 blocked out there. Do you have any idea what was,</p> <p>17 what the contents of that were?</p> <p>18 A. No.</p> <p>19 Q. Do you know what the contents of any</p> <p>20 of that was in relation to No. 3 that is not</p> <p>21 blacked out?</p> <p>22 MR. THEODOROU: Objection.</p> |
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| <p>1 media, the Treasury Department and the embargo,</p> <p>2 the time that you were there in October of 2001</p> <p>3 and the interaction that you had with -- well, let</p> <p>4 me ask you this: Did you have interaction with</p> <p>5 the media who were covering the Treasury</p> <p>6 Department in 2001?</p> <p>7 MR. THEODOROU: Objection.</p> <p>8 A. Every day.</p> <p>9 MR. ROSSETTI: I'm sorry?</p> <p>10 A. Every day.</p> <p>11 BY MR. ROSSETTI:</p> <p>12 Q. In your interaction -- prior to</p> <p>13 October 31st, 2001, your office was employing a</p> <p>14 press embargo, correct?</p> <p>15 MR. THEODOROU: Objection.</p> <p>16 A. We would employ them on certain</p> <p>17 instances. Yes.</p> <p>18 BY MR. ROSSETTI:</p> <p>19 Q. Depending on with the release, you had</p> <p>20 been employing embargoes during that time?</p> <p>21 A. Yes.</p> <p>22 Q. Correct?</p>  | <p>1 A. It just looks like we were just trying</p> <p>2 to decide what to say publically about the whole</p> <p>3 incident.</p> <p>4 MR. THEODOROU: Objection. Isn't this</p> <p>5 what this remain confidential?</p> <p>6 MR. ROSSETTI: She said she doesn't</p> <p>7 know.</p> <p>8 BY MR. ROSSETTI:</p> <p>9 Q. He discusses there was a leak a few</p> <p>10 weeks ago at emergency reopening. Did you have</p> <p>11 any discussions with Bitsberger about that?</p> <p>12 MR. THEODOROU: Objection.</p> <p>13 A. No.</p> <p>14 BY MR. ROSSETTI:</p> <p>15 Q. Do you know what the basis for the</p> <p>16 statement was?</p> <p>17 A. No.</p> <p>18 Q. Did he ever tell you what the basis of</p> <p>19 his statement was?</p> <p>20 MR. THEODOROU: Objection.</p> <p>21 A. No.</p> <p>22 BY MR. ROSSETTI:</p>  |

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| <p>1 Q. Did you ever learn what the basis of</p> <p>2 his statement was?</p> <p>3 A. No.</p> <p>4 Q. Did you have discussions with anybody</p> <p>5 else about his statement that there was a leak a</p> <p>6 few weeks ago at the emergency reopening?</p> <p>7 A. It would have been with Tony.</p> <p>8 Q. I'm sorry?</p> <p>9 A. It would have been with Tony Fratto.</p> <p>10 Q. But --</p> <p>11 A. That's the only person I would have</p> <p>12 discussed this with.</p> <p>13 Q. Do you recall having a discussion with</p> <p>14 Tony Fratto?</p> <p>15 A. No.</p> <p>16 Q. Did you learn whether or not, in fact,</p> <p>17 there was, in fact, ever a leak?</p> <p>18 A. No.</p> <p>19 Q. He says, "The refunding process has</p> <p>20 been criticized for years because of suspected</p> <p>21 leaks." Do you have any -- did you have any</p> <p>22 discussions with Bitsberger or who was</p>   | <p>1 ever learn who attributed the leak to the</p> <p>2 borrowing committee?</p> <p>3 A. Again, I wasn't a part of that E-mail,</p> <p>4 so I didn't know.</p> <p>5 MR. THEODOROU: Objection.</p> <p>6 BY MR. ROSSETTI:</p> <p>7 Q. Did you ever learn that the alleged</p> <p>8 leak at the reopening was attributed to the</p> <p>9 Treasury borrowing advisory committee?</p> <p>10 MR. THEODOROU: Objection.</p> <p>11 A. No.</p> <p>12 BY MR. ROSSETTI:</p> <p>13 Q. If you look at Exhibit 6.</p> <p>14 A. (The witness complies.)</p> <p>15 Q. There's a sentence here, paragraph's</p> <p>16 in the middle of the page it says Treasury</p> <p>17 officials declined to comment on the early release</p> <p>18 other than to determine the curve, that's the</p> <p>19 release on October 31st.</p> <p>20 This article then goes on to say it was the</p> <p>21 second time the Department has posted embargo</p> <p>22 information on the website before it was scheduled</p>   |
| Page 227   | Page 229   |
| <p>1 criticizing?</p> <p>2 A. No.</p> <p>3 Q. Did you ever learn who was apparently</p> <p>4 making this criticism?</p> <p>5 A. No.</p> <p>6 Q. Do you have any idea if Bitsberger's</p> <p>7 statement that there was a leak a few weeks ago at</p> <p>8 the emergency reopening was even true?</p> <p>9 MR. THEODOROU: Objection.</p> <p>10 A. No.</p> <p>11 BY MR. ROSSETTI:</p> <p>12 Q. Do you have any personal knowledge of</p> <p>13 any criticism about the refunding process and that</p> <p>14 there had been suspected leaks?</p> <p>15 MR. THEODOROU: Objection.</p> <p>16 A. No.</p> <p>17 BY MR. ROSSETTI:</p> <p>18 Q. In the last E-mail at 3:54 it says, in</p> <p>19 response to a question from Tony Fratto, "There</p> <p>20 was a leak during the emergency reopening,</p> <p>21 question mark and Bitsberger responds, yes,</p> <p>22 attributed to the borrowing committee." Did you</p> | <p>1 to enter the public domain and it talks about the</p> <p>2 October 22nd Kenneth Dam incident. Did you ever</p> <p>3 learn if that, in fact, is an incident that</p> <p>4 actually happened?</p> <p>5 MR. THEODOROU: Objection.</p> <p>6 A. No. But I mean, if it was a speech,</p> <p>7 we wouldn't have -- I mean, the embargo was just</p> <p>8 for the sake of having it hit the wires when he</p> <p>9 was actually speaking. It wouldn't have been a</p> <p>10 market-sensitive issue.</p> <p>11 BY MR. ROSSETTI:</p> <p>12 Q. I see. You had indicated earlier</p> <p>13 that, I believe you indicated earlier, let me</p> <p>14 restate that, that the refunding conference for</p> <p>15 October 31st, 2001 the information that was</p> <p>16 released contained market-sensitive information;</p> <p>17 is that correct.</p> <p>18 MR. THEODOROU: Objection.</p> <p>19 A. Yes.</p> <p>20 BY MR. ROSSETTI:</p> <p>21 Q. In your experience up to that point</p> <p>22 dealing with the refunding conference at Treasury,</p> |

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|---|---|
| <p>1 did the other, the previous refunding conferences,<br/> 2 did they also contain market-sensitive<br/> 3 information?<br/> 4 MR. THEODOROU: Objection.<br/> 5 A. As far as I can recall, we treat them<br/> 6 all as if they're market-sensitive information.<br/> 7 BY MR. ROSSETTI:<br/> 8 Q. Why is that?<br/> 9 A. Data about how much the Treasury is<br/> 10 going to borrow is something that is useful to<br/> 11 people in the bond market.<br/> 12 BY MR. ROSSETTI:<br/> 13 Q. Let's go off the record and take a<br/> 14 quick break.<br/> 15 MR. THEODOROU: I'm going to have a few<br/> 16 minutes.<br/> 17 THE VIDEO OPERATOR: Off the record at<br/> 18 5:07:16. On record at 5:11:50. This concludes<br/> 19 Tape 3 in the deposition of Michele Davis. Off<br/> 20 the record at 5:12:02. The this begins tape 4 in<br/> 21 the deposition of Michele Davis. On the record at<br/> 22 5:13:07.</p> | <p>1 permissible for someone to take embargoed<br/> 2 information and give it to somebody else to tip<br/> 3 them with information?<br/> 4 MR. THEODOROU: Objection.<br/> 5 BY MR. ROSSETTI:<br/> 6 Q. In the embargo.<br/> 7 MR. THEODOROU: Objection.<br/> 8 A. The embargo is about public release,<br/> 9 so you know, whatever purpose anybody uses it is<br/> 10 supposed to be just, the embargo is supposed to be<br/> 11 a period for writing a story and not releasing it<br/> 12 publically until the embargo time.<br/> 13 BY MR. ROSSETTI:<br/> 14 Q. Would it be appropriate for somebody<br/> 15 to take embargoed information and trade on it?<br/> 16 MR. THEODOROU: Objection.<br/> 17 A. No.<br/> 18 MR. THEODOROU: Objection.<br/> 19 BY MR. ROSSETTI:<br/> 20 Q. Would it be appropriate for someone to<br/> 21 take embargoed information and attempt to make<br/> 22 money for either themselves or their clients?</p> |
| Page 231  | Page 233  |
| <p>1 BY MR. ROSSETTI:<br/> 2 Q. Ms. Davis, you were asked some<br/> 3 questions earlier by Mr. Theodorou about Brian<br/> 4 Collins. Do you know Brian Collins?<br/> 5 A. No.<br/> 6 Q. Do you know if he attended the<br/> 7 Treasury refunding conference?<br/> 8 A. I have no idea.<br/> 9 Q. Do you know if he contacted anyone at<br/> 10 Fannie Mae?<br/> 11 A. I have no idea.<br/> 12 Q. If he did, do you know why he would<br/> 13 contact anyone at Fannie Mae?<br/> 14 A. No.<br/> 15 Q. Do you know what information if any he<br/> 16 provided to anyone at Fannie Mae?<br/> 17 MR. THEODOROU: Objection.<br/> 18 A. No.<br/> 19 BY MR. ROSSETTI:<br/> 20 Q. You indicated -- well, let me ask you<br/> 21 this: We were discussing about the embargo that<br/> 22 Treasury had, the information, would it be</p>   | <p>1 MR. THEODOROU: Objection.<br/> 2 A. No.<br/> 3 BY MR. ROSSETTI:<br/> 4 Q. Do you have any idea how many people<br/> 5 logged on the Treasury Department website after<br/> 6 the information was posted by a Frances Anderson<br/> 7 but before Reuters released the information on the<br/> 8 news wire?<br/> 9 MR. THEODOROU: Objection.<br/> 10 A. I don't know that.<br/> 11 BY MR. ROSSETTI:<br/> 12 Q. Do you know how it came about that<br/> 13 Reuters actually posted the information on the<br/> 14 wires?<br/> 15 A. I don't know.<br/> 16 Q. There was that exhibit that had the<br/> 17 Reuters headline on it, this Exhibit 9. Let me<br/> 18 know when you have that?<br/> 19 A. Yes.<br/> 20 Q. It says on the bottom there it says,<br/> 21 received by news edge E-D-G-E capital letter/LAN<br/> 22 10/31/2001 9:52 a.m. Do you know what News</p>  |

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|--|---|
| <p>1 Edge/LAN is?</p> <p>2 A. It's a service we subscribe to to get</p> <p>3 news clips.</p> <p>4 Q. That?</p> <p>5 A. The treasury.</p> <p>6 Q. I see. Do you have any idea when this</p> <p>7 information, the U.S. Treasury said discontinuing</p> <p>8 sales of regular index 30-year bonds that's</p> <p>9 indicated in Exhibit 9 was actually posted to the</p> <p>10 news wires?</p> <p>11 A. I don't.</p> <p>12 MR. ROSSETTI: I don't have any further</p> <p>13 questions. Thank you.</p> <p>14 REDIRECT EXAMINATION</p> <p>15 BY MR. THEODOROU:</p> <p>16 Q. Ms. Davis, Mr. Rossetti asked you</p> <p>17 about the work you did in Congress. Do you</p> <p>18 remember that?</p> <p>19 A. Yes.</p> <p>20 Q. And he also asked you about how</p> <p>21 embargoes were handled when you were in Congress?</p> <p>22 A. Yes.</p>  | <p>1 right?</p> <p>2 MR. ROSSETTI: Objection.</p> <p>3 A. Agencies meaning?</p> <p>4 BY MR. THEODOROU:</p> <p>5 Q. For instance, the Department of Labor</p> <p>6 had a particular embargo procedure in how it</p> <p>7 handled embargoed information, right?</p> <p>8 A. I don't know that.</p> <p>9 Q. Well, I showed you earlier today --</p> <p>10 well, isn't it true that the Department of Labor</p> <p>11 had a particular way of dealing with it using a</p> <p>12 lock-down procedure?</p> <p>13 MR. ROSSETTI: Objection.</p> <p>14 A. For one unemployment data release a</p> <p>15 month, not for every single release or embargoed</p> <p>16 release data.</p> <p>17 BY MR. THEODOROU:</p> <p>18 Q. But different agencies treated</p> <p>19 embargoed information or the procedures of</p> <p>20 releasing the embargoed information differently,</p> <p>21 correct; some had lock-down procedures and some</p> <p>22 didn't have lock-down procedures?</p> |
| Page 235   | Page 237  |
| <p>1 Q. And you testified that one of the ways</p> <p>2 that you'd alert reporters to an embargo is by</p> <p>3 placing an embargo on any announcement that was</p> <p>4 going out, right?</p> <p>5 A. Yes.</p> <p>6 Q. Now, the format and announcement that</p> <p>7 I showed you earlier that was distributed at the</p> <p>8 press conference on October 31st had for immediate</p> <p>9 release only. Now, that would not, when we're</p> <p>10 looking at that, that is not what you would</p> <p>11 normally see on a embargoed statement, correct,</p> <p>12 for immediate release only?</p> <p>13 MR. ROSSETTI: Objection.</p> <p>14 BY MR. THEODOROU:</p> <p>15 Q. Isn't that right?</p> <p>16 A. Yes.</p> <p>17 Q. Now, you also said that the reporters</p> <p>18 widely understood in the media what embargo meant,</p> <p>19 correct?</p> <p>20 A. Yes.</p> <p>21 Q. But it is true that different agencies</p> <p>22 had different procedures for embargoes; isn't that</p> | <p>1 A. And even the agencies that have</p> <p>2 lock-down procedures those apply to only some</p> <p>3 embargoed releases.</p> <p>4 Q. Only some embargoed releases, right,</p> <p>5 but when you say, you said earlier that it was</p> <p>6 widely understood by the media what embargoed</p> <p>7 meant? Is that the case for lay people also that</p> <p>8 they understood it, to your knowledge?</p> <p>9 MR. ROSSETTI: Objection.</p> <p>10 A. I wouldn't say that. Not that I know</p> <p>11 of.</p> <p>12 BY MR. THEODOROU:</p> <p>13 Q. You don't know?</p> <p>14 A. I don't know that everybody --</p> <p>15 Q. Understood what embargoed did like the</p> <p>16 press did, correct?</p> <p>17 A. Yes.</p> <p>18 Q. Now, you were asked by Mr. Rossetti</p> <p>19 when you first got there you met with your</p> <p>20 predecessor about Treasury Department protocols,</p> <p>21 procedures, things of that nature, correct?</p> <p>22 A. Yes.</p>             |

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|---|--|
| <p>1 Q. And you also met with various senior<br/>2 staff members; is that right?</p> <p>3 A. Yes.</p> <p>4 Q. And Mr. Rossetti asked you to<br/>5 generally describe how the embargo at Treasury was<br/>6 to be handled at the quarterly refunding<br/>7 conferences; isn't that right?</p> <p>8 A. Yes.</p> <p>9 Q. Do you remember answering some<br/>10 questions about that?</p> <p>11 A. Yes.</p> <p>12 Q. Now, on that particular day, if the<br/>13 press release on that day said or excuse me, you<br/>14 say that you had some input in the actual press<br/>15 statement that was being given out; is that<br/>16 correct?</p> <p>17 A. The text of the statement.</p> <p>18 Q. But not the formatting of the<br/>19 statement?</p> <p>20 A. Right.</p> <p>21 Q. So that the formatting of the<br/>22 statement that resulted in for immediate release,</p>   | <p>1 committee as well as suspected leaks concerning<br/>2 past refunding conferences. Do you remember that?</p> <p>3 A. Yes.</p> <p>4 Q. Now, as an assistant secretary of<br/>5 public affairs at that time, you did not conduct<br/>6 any review about those leaks, did you; the alleged<br/>7 leaks?</p> <p>8 A. I'm sorry the --</p> <p>9 Q. As assistant secretary of public<br/>10 affairs at that time, you did not conduct your own<br/>11 review of any of those leaks, correct?</p> <p>12 A. I'm not even sure I was aware of them,<br/>13 the allegation.</p> <p>14 Q. So your testimony is you don't recall<br/>15 being aware of them?</p> <p>16 A. Of the allegations, correct.</p> <p>17 MR. ROSSETTI: Objection.</p> <p>18 BY MR. THEODOROU:</p> <p>19 Q. Now, he ended your cross-examination<br/>20 of you by talking about Brian Collins and Brian<br/>21 Collins calling Fannie Mae with information about<br/>22 the termination of the 30-year bond, correct?</p> |
| Page 239  | Page 241   |
| <p>1 that statement for immediate release doesn't<br/>2 comply with what an embargo should be, right?</p> <p>3 A. Yeah, it depends. I don't know what<br/>4 time that was produced but if it was just before<br/>5 the embargo, yes. Right.</p> <p>6 Q. So if that statement was produced<br/>7 before 10 a.m. and given to members of the press<br/>8 before 10 a.m., it didn't really comply with the<br/>9 standard procedure and policy for an embargo?</p> <p>10 MR. ROSSETTI: Objection.</p> <p>11 A. If it was not also stated verbally.</p> <p>12 BY MR. THEODOROU:</p> <p>13 Q. Right. But normally if you had an<br/>14 embargoed press release, you stated it would say<br/>15 embargo?</p> <p>16 A. Right.</p> <p>17 Q. And the embargo time on it; is that<br/>18 right?</p> <p>19 A. Yes.</p> <p>20 Q. Mr. Rossetti asked you a series of<br/>21 questions about the suspected leaks including the<br/>22 suspected leak in the Treasury borrowing advisory</p> | <p>1 A. Yes.</p> <p>2 MR. ROSSETTI: Objection. That's not<br/>3 what I asked her. I just asked her if she knew<br/>4 him. I didn't ask any of the substance --</p> <p>5 MR. THEODOROU: Well, I'll let it<br/>6 stand. Let me ask my question, all right ?</p> <p>7 BY MR. THEODOROU:</p> <p>8 Q. Brian Collins, a reporter for the<br/>9 National Mortgage News called Janice Smith, an<br/>10 official of Fannie Mae about 9:35 a.m. and told<br/>11 her about the Treasury's decision to suspend the<br/>12 30-year bond. Your office did not take any action<br/>13 against Mr. Collins for calling Fannie Mae, did<br/>14 they?</p> <p>15 MR. ROSSETTI: Objection. What are you<br/>16 referring to there?</p> <p>17 A. I didn't even know that that --</p> <p>18 MR. ROSSETTI: Excuse me. Hold on.</p> <p>19 Are you referring to any document?</p> <p>20 MR. THEODOROU: I asked her -- no, I'm<br/>21 not referring to a document.</p> <p>22 MR. ROSSETTI: Okay. Objection.</p>    |

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| <p style="text-align: right;">Page 242</p> <p>1 MR. THEODOROU: All right. Object.</p> <p>2 A. I don't even know that that happened.</p> <p>3 BY MR. THEODOROU:</p> <p>4 Q. Well, assume that Mr. Collins called</p> <p>5 at 9:35 a.m. on October 31st, Janice Smith, an</p> <p>6 official of Fannie Mae. Should Mr. Collins have</p> <p>7 been subjected to any disciplinary action?</p> <p>8 MR. FREEBORNE: Objection. That's an</p> <p>9 improper question. She's a fact witness. Ask</p> <p>10 about facts. You're asking about opinions.</p> <p>11 MR. THEODOROU: Well, the question is</p> <p>12 -- well, are you instructing her not to answer?</p> <p>13 MR. FREEBORNE: It's an objectionable</p> <p>14 question.</p> <p>15 MR. THEODOROU: Well, all right. Go</p> <p>16 ahead.</p> <p>17 A. I don't even -- I don't know.</p> <p>18 BY MR. THEODOROU:</p> <p>19 Q. Well, had Mr. Collins called --</p> <p>20 MR. FREEBORNE: Are you going to give</p> <p>21 her a chance to respond?</p> <p>22 A. I don't even know how I would know</p>  | <p style="text-align: right;">Page 244</p> <p>1 BY MR. THEODOROU:</p> <p>2 Q. But my question is that if he alerted</p> <p>3 someone at Fannie Mae before 10 o'clock or even</p> <p>4 before it went public at 9:43, at 9:35, would that</p> <p>5 violate the embargo?</p> <p>6 MR. ROSSETTI: Objection.</p> <p>7 A. If he called and just randomly giving</p> <p>8 out embargoed information for no purpose, for not</p> <p>9 to -- not for news gathering purpose, not calling</p> <p>10 to get information for a story would be, yeah,</p> <p>11 that's not, there's no reason to do that with an</p> <p>12 embargo.</p> <p>13 BY MR. THEODOROU:</p> <p>14 Q. That would violate the embargo?</p> <p>15 MR. ROSSETTI: Objection.</p> <p>16 A. The embargo is time to collect news so</p> <p>17 you can write a complete story, and one of the</p> <p>18 issues in this story is what it would mean for</p> <p>19 mortgage rates and for mortgage companies. So if</p> <p>20 he -- I don't know if someone would call a lot of</p> <p>21 people wanted reaction and wanted to know how it</p> <p>22 would affect any other 30 year things like</p> |
| <p style="text-align: right;">Page 243</p> <p>1 that if it did happen in order to do anything</p> <p>2 about it.</p> <p>3 BY MR. THEODOROU:</p> <p>4 Q. But had Mr. Collins called Fannie Mae,</p> <p>5 wouldn't that have violated the embargo policy if</p> <p>6 he did it at 9:35?</p> <p>7 MR. ROSSETTI: Objection.</p> <p>8 A. It depends. I mean, I don't know what</p> <p>9 you're suggesting he called to say.</p> <p>10 BY MR. THEODOROU:</p> <p>11 Q. Listen. Well, last question. Had Mr.</p> <p>12 Collins called Fannie Mae at 9:35 a.m. and told</p> <p>13 Fannie Mae about the Treasury's decision to</p> <p>14 suspend the 30-year bond, would that action</p> <p>15 violate the embargo?</p> <p>16 MR. ROSSETTI: Objection.</p> <p>17 A. Only calling to tell someone else</p> <p>18 about embargoed information would violate</p> <p>19 embargoes. Calling to find out how, if that were</p> <p>20 an announcement how it would affect Fannie Mae's</p> <p>21 debt issuance and how it would affect mortgages,</p> <p>22 that is getting information for his story.</p> | <p style="text-align: right;">Page 245</p> <p>1 mortgages.</p> <p>2 So if he, I mean if he called just to say</p> <p>3 hey, if this happened what would it mean or how</p> <p>4 would you guys react, that's part of gathering</p> <p>5 news. I mean, it's just calling saying hey, I got</p> <p>6 a hot tip for you, then that's not part of writing</p> <p>7 a news story.</p> <p>8 BY MR. THEODOROU:</p> <p>9 Q. To your knowledge, was any</p> <p>10 disciplinary action taken against any reporters</p> <p>11 for the events of October 31?</p> <p>12 MR. ROSSETTI: Objection.</p> <p>13 A. What would they have --</p> <p>14 BY MR. THEODOROU:</p> <p>15 Q. To your knowledge, was any action</p> <p>16 taken against any reporters concerning disclosures</p> <p>17 of --</p> <p>18 A. I'm not aware of any reporters who</p> <p>19 would have, we would have, there would have been</p> <p>20 any reason to take any action on.</p> <p>21 Q. Well, my question is to your</p> <p>22 knowledge, was any disciplinary action taken</p>   |

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|--|--|
| <p>1 against any reporters because of disclosures were</p> <p>2 made before the embargoed time on October 31st,</p> <p>3 2001?</p> <p>4 MR. ROSSETTI: Objection.</p> <p>5 A. I'm not aware of any reporters making</p> <p>6 disclosures ahead of the embargo time on that day.</p> <p>7 Q. Okay.</p> <p>8 A. Once the material is posted on our</p> <p>9 website, that was the end of the embargo.</p> <p>10 Q. At 9:43.</p> <p>11 MR. THEODOROU: No further questions.</p> <p>12 MR. FREEBORNE: Can I have the elapsed</p> <p>13 time for --</p> <p>14 MR. ROSSETTI: I still have some</p> <p>15 questions.</p> <p>16 MR. FREEBORNE: How much?</p> <p>17 MR. ROSSETTI: A few. It's not going</p> <p>18 to be long.</p> <p>19 MR. FREEBORNE: All right. A couple of</p> <p>20 minutes. She's a busy woman. Let's go.</p> <p>21 MR. ROSSETTI: I understand but we're</p> <p>22 within our rights to ask recross questions. Do</p>   | <p>1 we use that is done electronic.</p> <p>2 Q. Pointing to --</p> <p>3 A. I'm sorry. The one No. 8 or 9 or not</p> <p>4 whatever this is, not No. 8 is a letterhead. This</p> <p>5 is letterhead that photocopy a statement onto</p> <p>6 letterhead.</p> <p>7 Q. The heading itself?</p> <p>8 A. Yes.</p> <p>9 Q. It is consistent with something you</p> <p>10 would hand out versus Exhibit 16 which has?</p> <p>11 A. Which has an electronic letterhead.</p> <p>12 Q. What is this consistent with, if</p> <p>13 anything?</p> <p>14 A. Just E-mailing something.</p> <p>15 Q. Okay. Were you aware whether or not</p> <p>16 anybody at the Treasury refunding conference</p> <p>17 announced that there was going to be a 10 a.m.</p> <p>18 embargo?</p> <p>19 MR. THEODOROU: Objection.</p> <p>20 A. I wasn't there.</p> <p>21 BY MR. ROSSETTI:</p> <p>22 Q. Did you have any conversation with</p>   |
| Page 247   | Page 249   |
| <p>1 you still want the time?</p> <p>2 MR. FREEBORNE: We'll get the time at</p> <p>3 the end. Go ahead.</p> <p>4 RECROSS EXAMINATION</p> <p>5 BY MR. ROSSETTI:</p> <p>6 Q. Ms. Davis, you were asked about the</p> <p>7 press release that's Exhibit 8. I'll have this</p> <p>8 marked as Exhibit 16.</p> <p>9 (Deposition Exhibit No. 16 was marked for</p> <p>10 identification.)</p> <p>11 BY MR. ROSSETTI:</p> <p>12 Q. I'm showing you what's been marked as</p> <p>13 Exhibit 16. That also is a copy of the press</p> <p>14 release from October 31st, 2001, and on the upper</p> <p>15 left-hand corner, is there any information in that</p> <p>16 about an embargo?</p> <p>17 A. It says embargoed until 10 a.m.</p> <p>18 Q. Do you know which copies, if any of</p> <p>19 those press releases, were released at the</p> <p>20 refunding conference?</p> <p>21 A. I wasn't there, so I don't know. This</p> <p>22 is an actual hard letterhead and this is something</p> | <p>1 Betsy Holahan when she explained numerous times</p> <p>2 before and at the end of the conference she</p> <p>3 announced the 10 a.m. embargo?</p> <p>4 MR. THEODOROU: Objection.</p> <p>5 A. That's what everyone, that's what was</p> <p>6 reported to me after the fact.</p> <p>7 BY MR. ROSSETTI:</p> <p>8 Q. But you didn't have conversations with</p> <p>9 her about that?</p> <p>10 A. Not -- I don't remember having them.</p> <p>11 Q. And you were asked a question about,</p> <p>12 Mr. Theodorou asked you about a layperson if they</p> <p>13 understood, you would expect them to understand</p> <p>14 the terms of the term embargo. If someone told</p> <p>15 you that they understood the embargo and that by</p> <p>16 releasing the information they were violating the</p> <p>17 embargo, would you have any question in your mind</p> <p>18 that they understood what an embargo meant?</p> <p>19 MR. THEODOROU: Objection.</p> <p>20 A. Well, yes.</p> <p>21 MR. ROSSETTI: And I don't have any</p> <p>22 further questions.</p> |

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|---|--|
| <p>1 MR. FREEBORNE: Okay.</p> <p>2 MR. THEODOROU: Thank you.</p> <p>3 THE VIDEO OPERATOR: This concludes the</p> <p>4 deposition of Michele Davis. It consists of the</p> <p>5 four videotapes. Off the record at 5:31:31.</p> <p>6 MR. FREEBORNE: I'd like the total</p> <p>7 elapsed time. Can we have that on the record?</p> <p>8 THE COURT REPORTER: Did you all want</p> <p>9 your same standing orders?</p> <p>10 MS. WILLIAMS: Yes.</p> <p>11 MR. THEODOROU: Yes.</p> <p>12 THE VIDEO OPERATOR: Mr. Theodorou used</p> <p>13 2 hours and 44 minutes and Mr. Rossetti used an</p> <p>14 hour and 23 minutes.</p> <p>15 (Deposition concluded at 5:31 p.m.)</p> <p>16</p> <p>17</p> <p>18</p> <p>19</p> <p>20</p> <p>21</p> <p>22</p> | <p>1 CERTIFICATE OF STENOGRAPHY REPORTER - NOTARY PUBLIC</p> <p>2 I, Okeemah S. Henderson, Professional</p> <p>3 Shorthand Reporter, the officer before whom the</p> <p>4 foregoing deposition was taken, do hereby certify</p> <p>5 that the witness named herein was duly sworn by</p> <p>6 me; that the foregoing transcript is a true,</p> <p>7 correct, and complete record of the testimony</p> <p>8 given; that said testimony was taken by me</p> <p>9 stenographically and thereafter reduced to</p> <p>10 typewriting by me; and that I am neither counsel</p> <p>11 for, related to, nor employed by any of the</p> <p>12 parties to this litigation and have no interest,</p> <p>13 financial or otherwise, in its outcome.</p> <p>14 IN WITNESS WHEREOF, I have hereunto set my</p> <p>15 hand and affixed my notarial seal.</p> <p>16</p> <p>17</p> <p>18</p> <p>19 Okeemah S. Henderson, LSR</p> <p>20</p> <p>21 Notary Public in and</p> <p>for the District of Columbia</p> <p>22 My Commission expires February 28, 2010</p> |
| Page 251  |  |
| <p>1 ACKNOWLEDGMENT OF DEPONENT</p> <p>2 I, MICHELE DAVIS, do hereby acknowledge that</p> <p>3 I have read and examined the foregoing pages of</p> <p>4 testimony, and the same is a true, correct and</p> <p>5 complete transcription of the testimony given by</p> <p>6 me, and any changes and/or corrections appear on</p> <p>7 the attached errata sheet signed by me.</p> <p>8</p> <p>9</p> <p>10</p> <p>11</p> <p>12 (Date) MICHELE DAVIS</p> <p>13</p> <p>14</p> <p>15</p> <p>16</p> <p>17</p> <p>18</p> <p>19</p> <p>20</p> <p>21</p> <p>22</p>  |  |

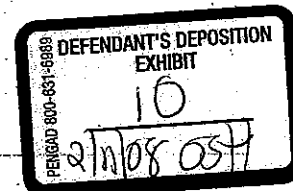
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From: Davis, Michele  
 Sent: Wednesday, October 31, 2001 12:53 PM  
 To: Malvey, Paul; Fratto, Tony; Fisher, Peter; Adams, Tim; Aufhauser, David  
 Cc: Roseboro, Brian; Gross, Jared; Nichols, Robert; Bitsberger, Timothy; Holahan, Betsy; Huther, Jeff  
 Subject: RE: Proposed statement re pre embargo release of Q4 refunding

I apologize to all of you for the early posting on the website. I thought our public affairs staff understood that embargo means embargo. I certainly will make sure they do now. The early posting was far more than "unfortunate" - it was careless and I'll make sure we don't have such lapses in the future. I'm sorry that all of you are having to take a lot of criticism for the carelessness in my shop.

-----Original Message-----

From: Malvey, Paul  
 Sent: Wednesday, October 31, 2001 12:29 PM  
 To: Fratto, Tony; Davis, Michele; Fisher, Peter; Adams, Tim; Aufhauser, David  
 Cc: Roseboro, Brian; Gross, Jared; Nichols, Robert; Bitsberger, Timothy; Holahan, Betsy; Huther, Jeff  
 Subject: RE: Proposed statement re pre embargo release of Q4 refunding



In addition though, in the same or different release, I think we have to acknowledge its presence on our web site around 10:45-50 and say it was unfortunate, etc. It's the web site that most (not all) of the complaints from market participants are referring to..

-----Original Message-----

From: Fratto, Tony  
 Sent: Wednesday, October 31, 2001 12:15 PM  
 To: Davis, Michele; Fisher, Peter; Adams, Tim; Aufhauser, David  
 Cc: Roseboro, Brian; Malvey, Paul; Gross, Jared; Nichols, Robert; Bitsberger, Timothy; Holahan, Betsy  
 Subject: Proposed statement re pre embargo release of Q4 refunding  
 Importance: High

Please get back to me with edits on this as soon as possible. I think this should be attributed to me:

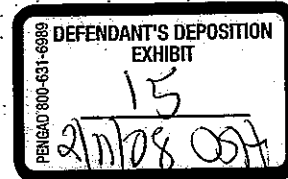
Following Treasury's Quarterly-Refunding press conference this morning it came to my attention that the content of the announcement was made public prior to the 10:00AM embargo time. Treasury considers this breach of confidence a serious matter. The integrity of the dissemination of Treasury information should be beyond question. We have begun an investigation of the cause of the pre-embargo release of information today. Furthermore, procedures and policies for Treasury's release of sensitive information is officially under review.

From: Fratto, Tony  
Sent: Monday, October 29, 2001 1:45 PM  
To: Davis, Michele; Holahan, Betsy; Nichols, Robert  
Subject: RE: Rough Estimate of Wed. events - comments welcome

FYI - Betsy and I talked Peter out of going live on Wednesday; press conference will end at 9:40am with a 10:00am embargo. Peter then will come back at 10:10am for background briefing.

-----Original Message-----

From: Davis, Michele  
Sent: Monday, October 29, 2001 1:22 PM  
To: Holahan, Betsy; Fratto, Tony; Nichols, Robert  
Subject: RE: Rough Estimate of Wed. events - comments welcome



thanks.

What reporters from the NYT, WSJ etc. do you think Peter should talk to? It's my impression that the right folks are in NY. Feurbringer, Ip, etc. Should we call them tomorrow and see if they want to make the trip down, rather than do this by conference call?

Also, please add the op-ed into your timeline -- Tuesday review by Public Affairs, call placed to WSJ Tuesday, etc.

Should we consider a single columnist for an interview with Peter, probably Samuelson? Maybe as part of the major paper group?

-----Original Message-----

From: Holahan, Betsy  
Sent: Monday, October 29, 2001 12:44 PM  
To: Davis, Michele; Fratto, Tony; Nichols, Robert  
Cc: Brisberger, Timothy; Roseboro, Brian; Gross, Jared; Huther, Jeff; Malvey, Paul  
Subject: Rough Estimate of Wed. events - comments welcome

Quarterly Refunding Timetable - DRAFT

Thursday, Oct. 30

5:00 pm Notify Treasury newsroom that Peter's statement will be available, embargoed, at 8:45 am on Wed. morning

Wednesday, Oct. 31

8:45 am Release embargoed copy of Peter's announcement to the Treasury newsroom  
9:00 am Doors are closed to Dip Room; Statement posted on Treasury web site  
9:01 am Peter makes announcement in Dip Room, followed by Q&A  
(he wants live TV for this, but ??)  
9:05 am Brian begins conference call with Hill staffers  
9:30 am Q&A at news conference ended by Public Affairs officials  
(no embargo on TV or newspaper coverage)  
9:35 am Peter begins making his calls to analysts, economists, etc.  
10:30 am Peter conducts roundtable interview with Treasury wire reporters  
11:00 am Peter begins interviews with WSJ, NY Times, Wash. Post, FT  
4 pm Peter conducts interview with CNBC for Market Wrap

## **Exhibit E**

### **Deposition of Elizabeth Holahan and Cited Exhibits (August 23, 2006)**

• Elizabeth Schmutz

August 23, 2006

Washington, DC

Page 1

1 UNITED STATES DISTRICT COURT  
2 DISTRICT OF MASSACHUSETTS  
3 - - - - - )  
4 UNITED STATES SECURITIES AND )  
5 EXCHANGE COMMISSION, )  
6 Plaintiff, )  
7 v. ) No. 05-10983 (NMG)  
8 STEVEN E. NOTHERN, ) August 23, 2006  
9 Defendant. )  
10 - - - - - )

11 Washington, D.C.  
12 Videotape Deposition of ELIZABETH HOLAHAN SCHMUTZ, a  
13 witness herein, called for examination by counsel for  
14 Defendant in the above-entitled matter, the witness  
15 being duly sworn by CHERYL A. LORD, a Notary Public  
16 in and for the District of Columbia, taken at the  
17 offices of FOLEY HOAG LLP, 1875 K Street, N.W., Suite  
18 800, Washington, D.C., at 10:16 a.m., Wednesday,  
19 August 23, 2006, and the proceedings being taken down  
20 by Stenotype by CHERYL A. LORD, RPR, CRR, and  
21 transcribed under her direction.  
22

Elizabeth Schmutz

August 23, 2006

Washington, DC

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|--|---|
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| 2  | 2 WITNESS EXAMINATION                       |
| 3 On behalf of Plaintiff:                          | 3 PAGE NO.                                  |
| 4 JOHN J. ROSSETTI JR., ESQ.                       | 4 ELIZABETH HOLAHAN SCHMUTZ                 |
| 5 Senior Counsel                                   | 5 By Mr. Theodorou 8                        |
| 6 ERICA WILLIAMS, ESQ.                             | 6 Afternoon Session 120                     |
| 7 UNITED STATES SECURITIES AND EXCHANGE COMMISSION | 7 By Ms. Williams 266                       |
| 8 Division of Enforcement                          | 8 By Mr. Theodorou 310                      |
| 9 100 F Street, N.E.                               | 9 By Ms. Williams 316                       |
| 10 Washington, D.C. 20549                          | 10 By Mr. Theodorou 320                     |
| 11 (202) 551-4819                                  | 11 By Ms. Williams 321                      |
| 12   | 12 By Ms. Theodorou 322                     |
| 13 On behalf of Defendant:                         | 13 EXHIBITS                                 |
| 14 NICHOLAS THEODOROU, ESQ.                        | 14 (Exhibits attached.)                     |
| 15 FOLEY HOAG LLP                                  | 15 HOLAHAN EXHIBIT NO. PAGE NO.             |
| 16 155 Seaport Boulevard                           | 16 1 Memorandum of Activity, 11-7-01 65     |
| 17 Seaport World Trade Center West                 | 17 2 "Printed by Reuters," No.              |
| 18 Boston, MA 02210-2600                           | 18 Nothern - 0386 73                        |
| 19 (617) 832-1000                                  | 19 3 BN article, Nos. SECNOTH00135977-78 77 |
| 20   | 20 4 Treasury News announcement,            |
| 21   | 21 10-30-01, No. SECNOTH00103448 93         |
| 22   | 22 5 Hand-drawn diagram 148                 |
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| 1 APPEARANCES CONTINUED:                           | 1 EXHIBITS CONTINUED                        |
| 2  | 2 HOLAHAN EXHIBIT NO. PAGE NO.              |
| 3 On behalf of United States Department of the     | 3 6 Email, 10-31-01, and attachments,       |
| 4 Treasury:  | 4 Nos. SECNOTH00103773-77 154               |
| 5 THOMAS M. McGIVERN, ESQ.                         | 5 7 Email, 10-31-01, No.                    |
| 6 CHRISTIAN FUREY, ESQ.                            | 6 SECNOTH00103778 164                       |
| 7 UNITED STATES DEPARTMENT OF THE TREASURY         | 7 8 Department of the Treasury              |
| 8 1500 Pennsylvania Avenue, N.W.                   | 8 announcement, 10-31-01 174                |
| 9 Washington, D.C. 20220                           | 9 9 Treasury News announcement,             |
| 10 (202) 622-2317                                  | 10 10-30-01 182                             |
| 11   | 11 10 Email, 10-31-01, and attachments,     |
| 12 ALSO PRESENT:                                   | 12 Nos. SECNOTH00103779-82 190              |
| 13 Dustin Lavallee, videographer                   | 13 11 Announcement, No. SECNOTH00103778 216 |
| 14   | 14 12 Treasury News, 10-31-01 230           |
| 15   | 15 13 Treasury News announcement,           |
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| 22   | 22  |

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| Page 6   | Page 8  |
|--|---|
| <p>1 PROCEEDINGS</p> <p>2</p> <p>3 THE VIDEOGRAPHER: This is tape number 1</p> <p>4 in the videotape deposition of Ms. Elizabeth Holahan</p> <p>5 in the matter of United States Securities Exchange</p> <p>6 Commission -- Securities and Exchange Commission</p> <p>7 versus Steven E. Nothorn, in the United States</p> <p>8 District Court for the District of Massachusetts,</p> <p>9 case number 05, dash, 10983, parenthesis, NMG, close</p> <p>10 paren.</p> <p>11 The deposition is being held at the law</p> <p>12 offices of Foley Hoag LLP at 1875 K street N.W.,</p> <p>13 Washington, D.C., 20006. And we're on the record at</p> <p>14 10:16 AM on August 23rd, 2006.</p> <p>15 My name is Dustin Lavallee, in association</p> <p>16 with Alderson Reporting, 1111 14th Street, suite 400,</p> <p>17 Washington, D.C., 20005, and I'm the legal video</p> <p>18 specialist. The court reporter is Cheryl Lord, also</p> <p>19 in association with Alderson Reporting.</p> <p>20 For the record, will counsel please</p> <p>21 introduce themselves.</p> <p>22 MR. THEODOROU: Nicholas Theodorou, from</p> | <p>1 counsel that all objections except as to matter of</p> <p>2 form, including motions to strike, are reserved until</p> <p>3 the time of trial.</p> <p>4 MS. WILLIAMS: We agree.</p> <p>5</p> <p>6 EXAMINATION BY COUNSEL FOR DEFENDANT</p> <p>7 BY MR. THEODOROU:</p> <p>8 Q. Good morning, Ms. Holahan.</p> <p>9 A. Good morning.</p> <p>10 Q. And that's the proper pronunciation of</p> <p>11 your last name?</p> <p>12 A. Correct.</p> <p>13 Q. Thank you.</p> <p>14 My name is Nicholas Theodorou, and I</p> <p>15 represent Mr. Nothorn, the defendant in this case.</p> <p>16 This morning, I'm going to be asking you a</p> <p>17 series of questions concerning events that took</p> <p>18 place, primarily events in October of 2001.</p> <p>19 As you know, you're under oath, and if</p> <p>20 you've got a problem understanding any of the</p> <p>21 questions, then you can ask me to clarify some of the</p> <p>22 questions.</p>   |
| Page 7   | Page 9  |
| <p>1 Foley Hoag in Boston, representing Mr. Nothorn.</p> <p>2 MS. WILLIAMS: Erica Williams from the</p> <p>3 United States Securities and Exchange Commission.</p> <p>4 MR. ROSSETTI: John Rossetti representing</p> <p>5 the U.S. Securities and Exchange Commission as well.</p> <p>6 MR. MCGIVERN: Tom McGivern from the U.S.</p> <p>7 Department of the Treasury.</p> <p>8 MR. FUREY: Christian Furey from the U.S.</p> <p>9 Department of the Treasury.</p> <p>10 THE VIDEOGRAPHER: Court reporter please</p> <p>11 swear in the witness.</p> <p>12</p> <p>13 Whereupon,</p> <p>14 ELIZABETH HOLAHAN SCHMUTZ</p> <p>15 was called as a witness by counsel for Defendant,</p> <p>16 and, having been duly sworn by the Notary Public, was</p> <p>17 examined and testified as follows:</p> <p>18</p> <p>19 MR. THEODOROU: For the matter of the</p> <p>20 record, I'll go through the stipulations governing</p> <p>21 the deposition.</p> <p>22 It is hereby stipulated by and between</p>  | <p>1 During the course of the deposition, there</p> <p>2 may be some objections raised by counsel in this</p> <p>3 case. You are still required to answer the questions</p> <p>4 even after the objections, unless you are directed by</p> <p>5 your own counsel not to answer the questions.</p> <p>6 Are you represented by counsel today?</p> <p>7 A. No.</p> <p>8 Q. All right. So you do not have your</p> <p>9 personal counsel?</p> <p>10 A. Correct.</p> <p>11 Q. All right. But if you're directed in any</p> <p>12 way to not answer a question, it's the only time that</p> <p>13 you can't answer a question. There have been</p> <p>14 instances I assume where the Department of the</p> <p>15 Treasury has raised certain objections where they've</p> <p>16 required present and former employees of the</p> <p>17 Department of the Treasury not to answer the</p> <p>18 questions, and we'll deal with that, but the</p> <p>19 objections may be stated by counsel, and you're still</p> <p>20 going to be required to answer.</p> <p>21 You understand that?</p> <p>22 A. Yes.</p> |

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| Page 10  | Page 12  |
|--|--|
| <p>1 Q. Also, because this is a deposition and we</p> <p>2 record what you say as well as how you look on the</p> <p>3 videotape, I ask that you answer each question, not</p> <p>4 simply nod your head in response.</p> <p>5 Do you understand that?</p> <p>6 A. I do.</p> <p>7 Q. Would you please state your full name for</p> <p>8 the record.</p> <p>9 A. My full legal name is Elizabeth Holahan</p> <p>10 Schmutz.</p> <p>11 Q. And where do you live?</p> <p>12 A. I live at 8407 Crossley Place, Alexandria,</p> <p>13 Virginia, 22308.</p> <p>14 Q. Would you please summarize for us your</p> <p>15 educational background.</p> <p>16 A. I have an undergraduate degree from</p> <p>17 Syracuse University, and that's it.</p> <p>18 Q. And when did you graduate from Syracuse?</p> <p>19 A. 1992.</p> <p>20 Q. What kind of degree do you have?</p> <p>21 A. It's an arts and sciences degree, major in</p> <p>22 English.</p>   | <p>1 the Senate.</p> <p>2 I then went to work for the U.S. Treasury</p> <p>3 Department in August of 2001. I was there for</p> <p>4 approximately 3 and a half years. And.</p> <p>5 I began employment with the U.S. Senate</p> <p>6 budget committee in June of 2005. And that's where I</p> <p>7 currently work.</p> <p>8 Q. And what is the Oil Daily?</p> <p>9 A. Oil Daily is a newsletter. It's a company</p> <p>10 that puts out newsletters that cover the energy</p> <p>11 industry.</p> <p>12 Q. What did you do there?</p> <p>13 A. I was originally working for a newsletter</p> <p>14 called Natural Gas Week when I was first hired, and I</p> <p>15 did - I was sort of an entry-level reporter. And I</p> <p>16 was then moved over to the newsletter called the Oil</p> <p>17 Daily, and I wrote a daily column on the New York</p> <p>18 Mercantile Exchange on the oil futures market.</p> <p>19 THE COURT REPORTER: Slow down a little</p> <p>20 bit, please.</p> <p>21 BY MR. THEODOROU:</p> <p>22 Q. You want to slow down for the reporter so</p> |
| Page 11  | Page 13  |
| <p>1 Q. A Bachelor of Arts?</p> <p>2 A. Correct.</p> <p>3 Q. Do you have any postgraduate degrees?</p> <p>4 A. I do not.</p> <p>5 Q. Could you please summarize for us your</p> <p>6 employment background beginning with your graduation</p> <p>7 from Syracuse.</p> <p>8 A. My first job out of college was working</p> <p>9 for a company called the Oil Daily Company here in</p> <p>10 Washington, D.C. I worked there for approximately 3</p> <p>11 years.</p> <p>12 I then went to work for a trade</p> <p>13 association in Washington, D.C., called the Farm</p> <p>14 Credit Council. I worked there for approximately a</p> <p>15 year and a half.</p> <p>16 I then went to work for U.S. Senator Pat</p> <p>17 Roberts from Kansas. I worked there for</p> <p>18 approximately 3 and a half years.</p> <p>19 I then worked for the U.S. Senate joint</p> <p>20 economic committee on the Senate side for U.S.</p> <p>21 Senator Robert Bennett from Utah. I was there for</p> <p>22 approximately 6 months due to a political shift in</p> | <p>1 that she gets it all right.</p> <p>2 A. The New York Mercantile Exchange, NYMEX.</p> <p>3 It's a commodity exchange in New York that handles</p> <p>4 oil futures.</p> <p>5 Q. What did you do for the Farm Credit</p> <p>6 Council?</p> <p>7 A. I was their communications manager, and I</p> <p>8 handled all their internal and external</p> <p>9 communications needs.</p> <p>10 Q. What is the Farm Credit Council?</p> <p>11 A. It's the lobbying arm of the farm credit</p> <p>12 system, which is a government-sponsored enterprise.</p> <p>13 It's a group of cooperative banks that lend to</p> <p>14 agriculture.</p> <p>15 Q. And you testified that you worked for</p> <p>16 Senator Roberts for 3 and a half years; is that</p> <p>17 correct?</p> <p>18 A. Correct.</p> <p>19 Q. And what did you do for Senator Roberts?</p> <p>20 A. I was his press secretary.</p> <p>21 Q. You then worked for the U.S. Senate joint</p> <p>22 economic committee?</p>   |

4 (Pages 10 to 13)

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| Page 14   | Page 16  |
|---|--|
| <p>1 A. Yes.</p> <p>2 The joint economic committee is actually</p> <p>3 the House and Senate joint committee. And I worked</p> <p>4 for the vice-chairman on the Senate side, who was at</p> <p>5 the time Senator Bennett from Utah, and I was their</p> <p>6 press secretary as well.</p> <p>7 Q. Press secretary for the committee?</p> <p>8 A. For the -- for Senator Bennett. He was</p> <p>9 the vice-chairman. The chairmanship switches back</p> <p>10 and forth.</p> <p>11 Q. And what was your position at the</p> <p>12 Department of the Treasury?</p> <p>13 A. I was the spokesperson for domestic</p> <p>14 finance for the first let's say 2 years, and for the</p> <p>15 last year that I was there, I was a senior adviser</p> <p>16 to the assistant secretary for public affairs, Rob</p> <p>17 Nichols.</p> <p>18 Q. And you currently work for the U.S. Senate</p> <p>19 budget committee?</p> <p>20 A. Correct.</p> <p>21 Q. And what is your position?</p> <p>22 A. Communications director.</p> | <p>1 Q. Mr. McGivern, and who else?</p> <p>2 A. Mr. Furey, at the end of the table.</p> <p>3 Q. And that was a few months ago?</p> <p>4 A. Yes.</p> <p>5 Q. Approximately when?</p> <p>6 A. May.</p> <p>7 Q. How long was the meeting?</p> <p>8 A. Approximately 2 and a half, 3 hours.</p> <p>9 Q. What was discussed at the meeting?</p> <p>10 A. This case.</p> <p>11 Q. Did you review any documents?</p> <p>12 A. I did.</p> <p>13 Q. What documents did you review?</p> <p>14 A. I reviewed a series of emails that I had</p> <p>15 send on the morning of October 31st, 2001.</p> <p>16 Q. Anything else?</p> <p>17 A. I reviewed this memorandum of activity</p> <p>18 that I had signed back in 2001 after being</p> <p>19 interviewed by attorneys from the Securities and</p> <p>20 Exchange Commission.</p> <p>21 Q. And the memorandum of activity is what</p> <p>22 date?</p>  |
| Page 15   | Page 17  |
| <p>1 Q. Did you do anything to preparation for</p> <p>2 this deposition before this morning?</p> <p>3 A. No.</p> <p>4 Q. Did you meet with any lawyers?</p> <p>5 A. I met with the attorneys from the SEC and</p> <p>6 also from the Treasury Department.</p> <p>7 Q. When was that?</p> <p>8 A. I last met with them yesterday.</p> <p>9 Q. When was the first time that you met with</p> <p>10 the SEC lawyers who are here today?</p> <p>11 A. Several months ago.</p> <p>12 Q. Where?</p> <p>13 A. At their offices.</p> <p>14 Q. Was anyone else -- when I say, SEC</p> <p>15 lawyers, I mean, Mr. Rossetti.</p> <p>16 Was he present?</p> <p>17 A. Yes.</p> <p>18 Q. And was Ms. Williams present?</p> <p>19 A. Yes.</p> <p>20 Q. Were there any other lawyers present at</p> <p>21 that first meeting?</p> <p>22 A. Mr. McGivern and Mr. Furey were attending.</p>   | <p>1 A. My copy is dated November 7th, 2001.</p> <p>2 Q. Did you review any other documents?</p> <p>3 A. Not that I recall.</p> <p>4 Q. Now, you say you discussed this case.</p> <p>5 Correct?</p> <p>6 A. Correct.</p> <p>7 Q. All right. Did the SEC or the Treasury</p> <p>8 Department lawyers tell you anything about what the</p> <p>9 allegations are in this case?</p> <p>10 A. They explained to me that there was a</p> <p>11 defendant in question who they were -- I guess they</p> <p>12 were filing a suit against a defendant. They gave me</p> <p>13 his name.</p> <p>14 Q. Did you -- did they give you any details</p> <p>15 about what he allegedly did?</p> <p>16 A. They did.</p> <p>17 Q. What did they tell you?</p> <p>18 A. They told me that he had received</p> <p>19 information that morning and had acted on it and that</p> <p>20 he was I believe the one person that had not agreed</p> <p>21 to settle the case, had proclaimed his innocence.</p> <p>22 Q. And did they agree with his alle- -- with</p> |

5 (Pages 14 to 17)

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|  |   |
|--|---|
| <p style="text-align: right;">Page 18</p> <p>1 his claim that he was innocent?</p> <p>2 A. No, they did not.</p> <p>3 MR. ROSSETTI: Is that what's called a</p> <p>4 softball?</p> <p>5 BY MR. THEODOROU:</p> <p>6 Q. Did they tell you what -- what specifics</p> <p>7 did they tell you about what he allegedly did?</p> <p>8 A. I don't recall them getting into</p> <p>9 specifics.</p> <p>10 Q. Did you take any notes of the meeting?</p> <p>11 A. I did not.</p> <p>12 Q. Do you know if the attorneys for the SEC</p> <p>13 took notes of the meeting?</p> <p>14 A. They did.</p> <p>15 Q. Do you know if Mr. McGivern and Mr. Furey</p> <p>16 took notes?</p> <p>17 A. I can't recall.</p> <p>18 Q. Did you meet with the SEC attorneys again</p> <p>19 before today's deposition?</p> <p>20 A. Yes.</p> <p>21 Q. When was that?</p> <p>22 A. It was yesterday.</p> | <p style="text-align: right;">Page 20</p> <p>1 Q. Did they tell you anything else?</p> <p>2 A. If I didn't understand a question, to ask</p> <p>3 for the question to be repeated, that it would be</p> <p>4 videotaped.</p> <p>5 Q. And who was giving you this advice?</p> <p>6 A. These 2 attorneys from the SEC.</p> <p>7 Q. Did they talk to you about how you should</p> <p>8 answer my questions today?</p> <p>9 A. Directly.</p> <p>10 Q. All right. Did they talk to you about how</p> <p>11 much you should volunteer in terms of information to</p> <p>12 my questions today?</p> <p>13 A. They advised me to answer the questions as</p> <p>14 they were asked.</p> <p>15 Q. And did they advise you not to go beyond</p> <p>16 the scope of the question?</p> <p>17 A. Yes.</p> <p>18 Q. And are you going to accept their advice?</p> <p>19 A. Yes, I am.</p> <p>20 Q. Okay. And you understand that you have to</p> <p>21 answer my questions completely, fully?</p> <p>22 A. I understand that.</p> |
| <p style="text-align: right;">Page 19</p> <p>1 Q. Where?</p> <p>2 A. At their office.</p> <p>3 Q. How long was the meeting?</p> <p>4 A. An hour and a half.</p> <p>5 Q. Was anyone else present?</p> <p>6 A. Mr. Furey was present.</p> <p>7 Q. Did you review any documents at that</p> <p>8 meeting?</p> <p>9 A. Yes.</p> <p>10 Q. What did you review?</p> <p>11 A. I reviewed some of the emails, and I</p> <p>12 reviewed the memorandum of activity again.</p> <p>13 Q. What did you discuss at that meeting?</p> <p>14 A. This case.</p> <p>15 Q. What specifically about this case?</p> <p>16 A. The time line of events, today's</p> <p>17 deposition.</p> <p>18 Q. Did they give you any advice about how you</p> <p>19 should act at this deposition?</p> <p>20 A. Yes.</p> <p>21 Q. What did they say?</p> <p>22 A. Tell the truth.</p>                          | <p style="text-align: right;">Page 21</p> <p>1 Q. Did they advise you that omitting any</p> <p>2 information that -- in answer to a question is the</p> <p>3 same as not answering the question truthfully?</p> <p>4 A. No.</p> <p>5 Q. All right. Then I would ask that you not</p> <p>6 omit any material information in response to a</p> <p>7 question that I ask.</p> <p>8 Did they go through the questions they</p> <p>9 were going to ask you today?</p> <p>10 A. No.</p> <p>11 Q. But you understand that in answering a</p> <p>12 question completely, you can't omit material</p> <p>13 information in answering the question.</p> <p>14 Correct?</p> <p>15 A. I understand that.</p> <p>16 Q. What particular areas -- did they discuss</p> <p>17 what I may be asking you today?</p> <p>18 A. Not in specifics.</p> <p>19 Q. Did they talk about certain areas that I</p> <p>20 would be asking about today?</p> <p>21 A. Not specifically, no.</p> <p>22 Q. Okay. Did you take any notes of that</p>  |

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|---|---|
| <p>1 meeting yesterday?</p> <p>2 A. No.</p> <p>3 Q. Do you know if the attorneys for the SEC</p> <p>4 did?</p> <p>5 A. They did.</p> <p>6 Q. All right. And how about Mr. Furey?</p> <p>7 A. I believe so.</p> <p>8 Q. Have you ever testified before?</p> <p>9 A. No, I have not.</p> <p>10 Q. Now, let's go back.</p> <p>11 You're currently the communications</p> <p>12 director of the Senate budget committee?</p> <p>13 A. Correct.</p> <p>14 Q. All right. Do you work for a particular</p> <p>15 senator?</p> <p>16 A. I do.</p> <p>17 Q. And who is that?</p> <p>18 A. U.S. Senator Judd Gregg from New</p> <p>19 Hampshire.</p> <p>20 Q. And what are your duties as the</p> <p>21 communications director of the Senate budget</p> <p>22 committee?</p>   | <p>1 A. I did.</p> <p>2 Q. Who was that?</p> <p>3 A. Tony Fratto.</p> <p>4 His title was director of public affairs.</p> <p>5 Q. And what were your responsibilities as</p> <p>6 director -- excuse me -- spokesperson for domestic</p> <p>7 finance?</p> <p>8 A. I served as the media liaison for the</p> <p>9 office of domestic finance.</p> <p>10 Q. And what is the office of domestic</p> <p>11 finance?</p> <p>12 A. It's an office within the Treasury</p> <p>13 Department. It's headed up by the undersecretary for</p> <p>14 domestic finance, and there are 3 assistant</p> <p>15 secretaries under him.</p> <p>16 Q. What does it do?</p> <p>17 A. Well, oversees financial markets,</p> <p>18 financial institutions, fiscal matters pertaining to</p> <p>19 the U.S. Treasury.</p> <p>20 Q. Does it have to do with government bonds?</p> <p>21 A. Yes.</p> <p>22 Q. What does it do with government bonds?</p>   |
| Page 23   | Page 25   |
| <p>1 A. I oversee the efforts of the</p> <p>2 communications office at the budget committee to</p> <p>3 liaison with the media, to liaison with the press</p> <p>4 members, the press secretaries for the members of the</p> <p>5 committee, also with external groups.</p> <p>6 Q. And how long have you held this position?</p> <p>7 A. Approximately a year and a half.</p> <p>8 Q. Now, I want to direct your attention to</p> <p>9 your employment at Treasury.</p> <p>10 When did you start at Treasury?</p> <p>11 A. August 6th of 2001.</p> <p>12 Q. And when did you end?</p> <p>13 A. My last day was at the end of May 2005.</p> <p>14 Q. And why did you leave the Treasury</p> <p>15 Department?</p> <p>16 A. I was offered a position with the Senate</p> <p>17 budget committee and I accepted it.</p> <p>18 Q. What was your position at Treasury in</p> <p>19 October of 2001?</p> <p>20 A. I was the spokesperson for domestic</p> <p>21 finance.</p> <p>22 Q. Did you have a supervisor?</p> | <p>1 A. Treasury Department issues federal bonds.</p> <p>2 Q. And what does the office do of domestic</p> <p>3 finance in relation to federal bonds?</p> <p>4 A. Makes decisions regarding how many bond</p> <p>5 will be issued.</p> <p>6 Q. How long did you work as the media liaison</p> <p>7 for the office of domestic finance?</p> <p>8 A. I was there from August of 2001 until --</p> <p>9 think -- October -- roughly, September, October of</p> <p>10 either 2003 or 2004. I'd have to go back and look at</p> <p>11 my resume actually.</p> <p>12 I think I spent 2 years in the domestic</p> <p>13 finance office as spokesperson, and the last year</p> <p>14 that I was at Treasury, I was the senior advisor.</p> <p>15 Q. Did you report to Mr. Fratto during that</p> <p>16 entire time?</p> <p>17 A. No.</p> <p>18 I was -- I reported to Tony Fratto when I</p> <p>19 was a spokesperson for domestic finance. Once I</p> <p>20 became the senior adviser to the senior secretary, I</p> <p>21 reported to Rob Nichols.</p> <p>22 Q. And how long were you spokesperson for</p> |

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|--|---|
| <p>1 domestic finance?</p> <p>2 A. Approximately 2 and a half years.</p> <p>3 Q. You were the only spokesperson for the</p> <p>4 division?</p> <p>5 A. Yes.</p> <p>6 Q. And so that was during the entire time you</p> <p>7 worked for domestic finance, 2 and a half years?</p> <p>8 A. M-hm.</p> <p>9 Q. And then you moved on as a senior adviser</p> <p>10 in what department?</p> <p>11 A. I was still within public affairs. I had</p> <p>12 a different role.</p> <p>13 Q. Okay. And what was the role?</p> <p>14 A. Senior adviser to the assistant secretary</p> <p>15 of public affairs.</p> <p>16 Q. And who was that?</p> <p>17 A. Rob Nichols.</p> <p>18 Q. So what were your duties and</p> <p>19 responsibilities as spokesperson for the domestic</p> <p>20 finance department?</p> <p>21 A. I was the contact. If the media wanted to</p> <p>22 interview any of the officials in the office, they</p>  | <p>1 domestic finance?</p> <p>2 A. I met with the different officials, and</p> <p>3 some officials gave me information about what their</p> <p>4 particular office did. I also had some bureaus that</p> <p>5 I was liaison to.</p> <p>6 We have many bureaus at Treasury, and so I</p> <p>7 met with bureau heads and other spokespeople at those</p> <p>8 bureaus, and they gave me information on what the</p> <p>9 bureaus did, so I had materials.</p> <p>10 Q. Okay. What officials did you meet with?</p> <p>11 A. Peter Fisher was the undersecretary for</p> <p>12 domestic finance, Brian Roseboro, who was the</p> <p>13 assistant secretary for financial markets. Sheila</p> <p>14 Barr (phonetic) was the assistant secretary for</p> <p>15 financial institutions. Don Hammond was the</p> <p>16 assistant secretary for fiscal.</p> <p>17 We had a U.S. treasurer that I was</p> <p>18 responsible for her media. Her name was Rosario</p> <p>19 Marin.</p> <p>20 Q. So the assistant secretary for fiscal was</p> <p>21 Don Hammond and the U.S. Treasurer was who?</p> <p>22 A. Rosario Marin, spelled M-A-R-I-N.</p> |
| Page 27  | Page 29   |
| <p>1 would contact me. I would set up the interview. I</p> <p>2 issued press releases, media advisories, accompanied</p> <p>3 the principals when they went to events.</p> <p>4 Q. Did you have a staff?</p> <p>5 A. The office of domestic finance had some</p> <p>6 administrative staff, but I did not personally have</p> <p>7 someone assigned to me.</p> <p>8 Q. Did you have anybody reporting directly to</p> <p>9 you?</p> <p>10 A. No.</p> <p>11 Q. And what -- did you have a particular</p> <p>12 title as this press liaison?</p> <p>13 Did you have a technical title?</p> <p>14 A. My technical title was public affairs</p> <p>15 specialist.</p> <p>16 Q. Now, before you started on August of 2001,</p> <p>17 did Treasury train you in any way for your job as to</p> <p>18 what you were to do?</p> <p>19 A. No, not formally.</p> <p>20 Q. After you started in August of 2001, did</p> <p>21 you receive any training as to what you were to do as</p> <p>22 a public affairs specialist for the office of</p> | <p>1 Q. All right. Then you said you talked to</p> <p>2 the various bureaus.</p> <p>3 Correct?</p> <p>4 A. (Nodding head.)</p> <p>5 Q. What bureaus?</p> <p>6 A. The bureau of public debt, bureau of</p> <p>7 engraving and printing, the U.S. Mint.</p> <p>8 Q. Anybody else?</p> <p>9 A. Yes.</p> <p>10 I can't recall.</p> <p>11 Let me think.</p> <p>12 There's 2 more I'm forgetting. I can't</p> <p>13 recall.</p> <p>14 Q. Now, was this over -- you started in</p> <p>15 August of 2001.</p> <p>16 Obviously you spoke to this group of</p> <p>17 people, these officials over a period of time?</p> <p>18 A. Over several weeks.</p> <p>19 Q. Several weeks?</p> <p>20 A. M-hm.</p> <p>21 Q. Had you spoken to all of them before the</p> <p>22 October 31st, 2001, refunding conference?</p>   |

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|---|---|
| <p>1 A. To the best of my recollection, yes.</p> <p>2 Q. Now, you said you met with secretary</p> <p>3 Fisher.</p> <p>4 Correct?</p> <p>5 A. Correct.</p> <p>6 Q. What did he tell he about or what kind of</p> <p>7 training and advice did he give you about your job?</p> <p>8 A. I don't recall.</p> <p>9 Q. You also said you met with the assistant</p> <p>10 secretary for financial markets, Brian Roseboro?</p> <p>11 A. Yes.</p> <p>12 Q. And what kind of training or advice did he</p> <p>13 give you about your job?</p> <p>14 A. I don't recall.</p> <p>15 Q. You also said you met with someone called</p> <p>16 Sheila Barr (phonetic)?</p> <p>17 A. Yes.</p> <p>18 Q. And her job was -- is that a yes or a no?</p> <p>19 A. Yes, I did meet with her, yes.</p> <p>20 She was the assistant secretary for</p> <p>21 financial institutions.</p> <p>22 Q. What kind of training or advice did she</p> | <p>1 Q. Do you remember what kind of training or</p> <p>2 advice he gave you about what you were to do in your</p> <p>3 job?</p> <p>4 A. I don't recall.</p> <p>5 Q. All right. How about Rosario Marin?</p> <p>6 Do you remember what she -- the training</p> <p>7 or advice she gave you about your job?</p> <p>8 A. I don't recall.</p> <p>9 Q. Now, you also said -- testified you met</p> <p>10 with various bureaus such as the bureau of public</p> <p>11 debt, engraving and printing, and mint.</p> <p>12 Correct?</p> <p>13 A. Correct.</p> <p>14 Q. Do you remember what kind of training or</p> <p>15 advice any of the officials at those bureaus gave</p> <p>16 you?</p> <p>17 A. They gave me materials about what the</p> <p>18 bureaus did, but they had their own spokespeople in</p> <p>19 place, so they were not giving me training or advice.</p> <p>20 Q. But you can't recall what the officials</p> <p>21 you met with told you?</p> <p>22 A. To summarize, I think most of them gave me</p> |
| Page 31   | Page 33   |
| <p>1 give you about your job?</p> <p>2 A. I don't recall.</p> <p>3 Q. You said you met with Don Hammond; is that</p> <p>4 correct?</p> <p>5 A. That's correct.</p> <p>6 Q. And he was the assistant secretary of</p> <p>7 financial institutions?</p> <p>8 A. For fiscal.</p> <p>9 Q. Excuse me.</p> <p>10 Assistant secretary for fiscal.</p> <p>11 What does that mean, assistant secretary</p> <p>12 for fiscal?</p> <p>13 A. The best way to describe it is that it's</p> <p>14 sort of looking at the checkbook of the United States</p> <p>15 government, what's going out, what's coming in.</p> <p>16 Q. Most of it is going out.</p> <p>17 (Laughter.)</p> <p>18 BY MR. THEODOROU</p> <p>19 Q. But that's basically what he does?</p> <p>20 A. Yes.</p> <p>21 He's not a political appointee. He's a</p> <p>22 government employee that's there.</p>   | <p>1 basic information about what their particular offices</p> <p>2 did, the function of the office.</p> <p>3 Q. Did Tony Fratto, your supervisor, train</p> <p>4 you in any way as to what you would be doing at</p> <p>5 Treasury?</p> <p>6 A. In an ad hoc manner, yes. He gave me</p> <p>7 information as it was needed.</p> <p>8 Q. Did you ever receive any training on how</p> <p>9 to deal with the release of market-sensitive</p> <p>10 information?</p> <p>11 A. Not formally, no.</p> <p>12 Q. All right. Informally you received some</p> <p>13 training?</p> <p>14 A. As situations would come up and I would</p> <p>15 have questions, they would be answered.</p> <p>16 Q. Before October -- the October 31st, 2001,</p> <p>17 refunding conference, did you receive any training on</p> <p>18 how to deal with market-sensitive information?</p> <p>19 A. No.</p> <p>20 Q. Did you receive any training on how</p> <p>21 Treasury press conferences were to be conducted in</p> <p>22 your area?</p> |

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|---|---|
| <p>1 A. Can you restate the question.</p> <p>2 Q. All right. Before the October 31st, 2001,</p> <p>3 refunding conference, did you receive any training</p> <p>4 from the Department of the Treasury or any of your</p> <p>5 supervisors about how press conferences were to be</p> <p>6 conducted?</p> <p>7 A. I don't recall.</p> <p>8 Q. Before the October 31st refunding</p> <p>9 conference, did you ever receive any training as to</p> <p>10 what the term embargo means?</p> <p>11 A. I did not.</p> <p>12 Q. Before the October 31st, 2001, refunding</p> <p>13 conference, did you receive any training regarding</p> <p>14 the procedures to be used for the release of</p> <p>15 information that's discussed at the quarterly</p> <p>16 refunding conferences to the public?</p> <p>17 A. I did have a conversation with Tony Fratto</p> <p>18 about the general procedures of that particular</p> <p>19 event.</p> <p>20 Q. For the October 31st conference?</p> <p>21 A. Yes.</p> <p>22 Q. When did you have this discussion with</p> | <p>1 through what the time line would be, what to expect,</p> <p>2 gave me information on who to speak to within the</p> <p>3 office of domestic finance for more details about the</p> <p>4 different strategies of the refunding announcement.</p> <p>5 Q. What else did he say?</p> <p>6 A. I don't recall.</p> <p>7 Q. What did he say the event was about?</p> <p>8 A. I don't recall.</p> <p>9 Q. Okay. You testified that you talked about</p> <p>10 a time line as to what you should expect.</p> <p>11 Correct?</p> <p>12 A. Correct.</p> <p>13 Q. And what did he say about the time line?</p> <p>14 A. The refunding is a 3-day event.</p> <p>15 Q. What else did he say about this other than</p> <p>16 saying the refunding was a 3-day event?</p> <p>17 A. He explained there was information</p> <p>18 released the first day, which is a Monday, second day</p> <p>19 is a Tuesday, and the third day is a Wednesday. He</p> <p>20 previously handled the refunding before I --</p> <p>21 Q. He previously handled the refunding</p> <p>22 conferences?</p> |
| Page 35   | Page 37   |
| <p>1 Tony Fratto?</p> <p>2 A. I don't recall the exact date.</p> <p>3 Q. Do you recall approximately when?</p> <p>4 A. That fall, September or October.</p> <p>5 Q. And where did this discussion take place?</p> <p>6 A. To the best of my recollection, it was in</p> <p>7 his office.</p> <p>8 Q. Where is his office?</p> <p>9 A. His office is at the end of the office in</p> <p>10 which the public affairs staff sat.</p> <p>11 Q. And where is the public affairs office?</p> <p>12 A. At that time, it was on the second floor</p> <p>13 of the Treasury Department.</p> <p>14 Q. Was anybody else present at this</p> <p>15 discussion?</p> <p>16 A. Not to my recollection.</p> <p>17 Q. What did Mr. Fratto say?</p> <p>18 A. I don't recall his exact words.</p> <p>19 Q. What was the substance of the</p> <p>20 conversation?</p> <p>21 A. He explained that the Treasury Department</p> <p>22 had this event called a refunding and walked me</p>  | <p>1 A. Well, before I arrived and inquired, yeah.</p> <p>2 Q. Well, did he say what happens on Monday?</p> <p>3 A. I don't recall.</p> <p>4 Q. Did he say what was going to happen on a</p> <p>5 Tuesday?</p> <p>6 A. I don't recall.</p> <p>7 Q. Did he say what was going to happen on a</p> <p>8 Wednesday?</p> <p>9 A. There would be a press conference on</p> <p>10 Wednesday.</p> <p>11 Q. Did he say anything about how the press</p> <p>12 conference was to be handled?</p> <p>13 A. I don't recall exactly what he told me</p> <p>14 about the press conference.</p> <p>15 Q. Would anything refresh your recollection?</p> <p>16 A. I don't know. It depends on what it was.</p> <p>17 Q. Well, were there -- is there any written</p> <p>18 procedure as to how these press conferences are to be</p> <p>19 handled?</p> <p>20 A. Not at that time.</p> <p>21 Q. As to the press conference, did he talk to</p> <p>22 you about embargo and what that means?</p>  |

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|--|--|
| <p>1 A. I knew what embargo meant.</p> <p>2 Q. So you knew what embargo meant.</p> <p>3 And what was your understanding of what</p> <p>4 embargo means --</p> <p>5 A. That the information --</p> <p>6 Q. -- or meant?</p> <p>7 Excuse me.</p> <p>8 Meant.</p> <p>9 A. What an embargo means to the media?</p> <p>10 Q. No.</p> <p>11 I'm asking you what at that time -- you</p> <p>12 said you knew what embargo meant.</p> <p>13 What was your understanding of what</p> <p>14 embargo was at that time?</p> <p>15 A. It meant that the press received</p> <p>16 information, and they would hold that information</p> <p>17 until an agreed-upon time, at which point it would be</p> <p>18 released to the public.</p> <p>19 Q. But as to your discussion with Mr. Fratto</p> <p>20 about the press conference in October that was going</p> <p>21 to take place in October of 2001, did he talk to you</p> <p>22 about what embargo meant vis-a-vis that press</p> | <p>1 A. Correct.</p> <p>2 Q. Approximately September or October?</p> <p>3 A. Yes.</p> <p>4 Q. Okay. Now, at that meeting, did</p> <p>5 Mr. Fratto discuss with you what -- discuss with you</p> <p>6 the embargo that was to be imposed on that</p> <p>7 conference, that press conference -- refunding</p> <p>8 conference?</p> <p>9 Excuse me.</p> <p>10 A. I don't recall the exact conversation.</p> <p>11 Q. Now, when you say you don't recall, does</p> <p>12 that mean you have some -- you think you have some</p> <p>13 recollection about a discussion of embargo, or you</p> <p>14 just don't recall any discussion?</p> <p>15 A. I have a vague recollection that we had a</p> <p>16 conversation about what the refunding event was. And</p> <p>17 he explained to me the time line.</p> <p>18 Q. But you do not recall any discussion about</p> <p>19 what kind of embargo was to be imposed?</p> <p>20 A. Correct.</p> <p>21 Q. How long did this meeting last?</p> <p>22 A. To the best of my recollection, probably</p>                  |
| Page 39  | Page 41  |
| <p>1 conference?</p> <p>2 A. No, he did not.</p> <p>3 MR. ROSSETTI: Nick, are you asking</p> <p>4 questions specifically about October 31st refunding</p> <p>5 conference?</p> <p>6 MR. THEODOROU: No.</p> <p>7 I'm asking questions about -- I'll</p> <p>8 clar- -- I'm asking questions about her meeting with</p> <p>9 Fratto, about she testified that meeting was</p> <p>10 regarding the upcoming October conference that took</p> <p>11 place sometime in September.</p> <p>12 MS. WILLIAMS: Or October.</p> <p>13 BY MR. THEODOROU:</p> <p>14 Q. If I mischaracterized your testimony,</p> <p>15 correct me, but I think I --</p> <p>16 You had a meeting with Fratto to discuss</p> <p>17 the upcoming refunding conference in October.</p> <p>18 Correct?</p> <p>19 A. Correct.</p> <p>20 Q. All right. And that meeting you think</p> <p>21 took place in the fall.</p> <p>22 Correct?</p>  | <p>1 10 minutes.</p> <p>2 Q. Did -- during the course of that</p> <p>3 discussion, did he discuss how the press release for</p> <p>4 that refunding conference was to be handled?</p> <p>5 A. I don't recall.</p> <p>6 Q. Do you recall him discussing anything</p> <p>7 about the procedure for releasing information from</p> <p>8 that conference?</p> <p>9 A. I don't recall the exact conversation.</p> <p>10 Q. Now, when you met with the SEC lawyers</p> <p>11 yesterday, did they specifically tell you, if you</p> <p>12 can't recall something, say you can't recall?</p> <p>13 A. Told me to tell the truth, and they told</p> <p>14 me if I couldn't recall something, be direct and to</p> <p>15 be truthful about it.</p> <p>16 Q. Well, I'm going to ask you a question.</p> <p>17 I'm going to ask you: What do you think</p> <p>18 happened? What do you think he discussed?</p> <p>19 MS. WILLIAMS: Objection.</p> <p>20 BY MR. THEODOROU:</p> <p>21 Q. I do want you to speculate.</p> <p>22 A. I'm going to decline to speculate.</p> |

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|---|--|
| <p>1 Q. Well, then, you decline to speculate, but</p> <p>2 I'm asking you to speculate.</p> <p>3 What do you think you talked about?</p> <p>4 MS. WILLIAMS: Objection.</p> <p>5 MR. THEODOROU: You can state the</p> <p>6 objection. You have no privileges to whether --</p> <p>7 BY MR. THEODOROU.</p> <p>8 Q. I'm going to expect you to answer the</p> <p>9 question.</p> <p>10 MR. ROSSETTI: She's here to --</p> <p>11 MS. WILLIAMS: I'm going to keep --</p> <p>12 MR. ROSSETTI: -- answer questions of</p> <p>13 fact.</p> <p>14 MR. THEODOROU: Who is going to be raising</p> <p>15 the objections today?</p> <p>16 MS. WILLIAMS: I'm going to be raising an</p> <p>17 objection.</p> <p>18 MR. THEODOROU: All right.</p> <p>19 A. I'm declining to speculate.</p> <p>20 BY MR. THEODOROU:</p> <p>21 Q. You don't have any recollection of what --</p> <p>22 a discussion of how the embargo is to be handled.</p> | <p>1 A. Correct.</p> <p>2 Q. All right. Now, as of October 31st, 2001,</p> <p>3 did the Department of the Treasury have any written</p> <p>4 policies and procedures about how market-sensitive</p> <p>5 information was released?</p> <p>6 A. Prior to October 31st?</p> <p>7 Q. As of October 31, 2001.</p> <p>8 A. Not to my knowledge.</p> <p>9 Q. Okay. Was there any -- were there any</p> <p>10 written policies and procedures as of October 31,</p> <p>11 2001, as to how Treasury press conferences were to be</p> <p>12 conducted?</p> <p>13 A. Not to my knowledge.</p> <p>14 Q. Were there any policies and procedures as</p> <p>15 of October 31, 2001, as to how refunding conferences</p> <p>16 were to be conducted?</p> <p>17 A. Not to my knowledge.</p> <p>18 Q. Were there any policies and procedures at</p> <p>19 Treasury as of October 31, 2001, as to -- concerning</p> <p>20 the use of embargoes at Treasury?</p> <p>21 A. Not to my knowledge.</p> <p>22 Q. Were there any policies and procedures to</p> |
| Page 43   | Page 45  |
| <p>1 Correct?</p> <p>2 MS. WILLIAMS: Objection.</p> <p>3 You're talking about this first</p> <p>4 conversation she had --</p> <p>5 MR. THEODOROU: -- with Fratto.</p> <p>6 MS. WILLIAMS: -- in September or</p> <p>7 October --</p> <p>8 MR. THEODOROU: Correct.</p> <p>9 MS. WILLIAMS: -- the 10-minute</p> <p>10 conversation?</p> <p>11 THE COURT REPORTER: Okay. You guys have</p> <p>12 to slow down, all of you, and we have to talk one at</p> <p>13 a time.</p> <p>14 Okay?</p> <p>15 MS. WILLIAMS: Yes.</p> <p>16 THE COURT REPORTER: I'm making a record,</p> <p>17 or I'm trying to.</p> <p>18 BY MR. THEODOROU:</p> <p>19 Q. You don't have a recollection of him</p> <p>20 discussing about in that September conversation how</p> <p>21 the embargo was to be handled.</p> <p>22 Correct?</p>   | <p>1 your knowledge as of October 31, 2001, concerning the</p> <p>2 procedures for the release of information at a</p> <p>3 quarterly refunding announcement?</p> <p>4 A. Not to my knowledge.</p> <p>5 Q. Before October 31, 2001, did anyone at</p> <p>6 Treasury ever explain to you the difference between</p> <p>7 market-sensitive information and other information?</p> <p>8 A. No.</p> <p>9 Q. Did anyone ever talk to you about what</p> <p>10 market-sensitive information is?</p> <p>11 A. At the Treasury Department?</p> <p>12 Q. Yes.</p> <p>13 A. No.</p> <p>14 Q. Did anyone at Treasury before October 31,</p> <p>15 2001, ever talk to you about the need to keep certain</p> <p>16 information confidential?</p> <p>17 A. I received -- I had a classification for</p> <p>18 the ability to review classified documents -- I'm</p> <p>19 trying -- I had clearance. I had classified</p> <p>20 clearance.</p> <p>21 So I understood --</p> <p>22 Q. I'm not going to ask you about classified</p>                  |

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| <p>1 documents.</p> <p>2 But go ahead.</p> <p>3 A. I understood there were things that took</p> <p>4 place at Treasury that were market-sensitive and that</p> <p>5 considered top secret, an understanding of that.</p> <p>6 Q. There was nothing concerning the October</p> <p>7 31, 2001, conference that would be considered top</p> <p>8 secret though.</p> <p>9 MS. WILLIAMS: Objection.</p> <p>10 A. I'm not in a position to classify that as</p> <p>11 anything.</p> <p>12 BY MR. THEODOROU:</p> <p>13 Q. I'm sure I would have heard from</p> <p>14 Mr. McGivern or Mr. Furey on that.</p> <p>15 As of October 31, 2001, did you have any</p> <p>16 understanding of Treasury's policies on the use of</p> <p>17 embargoes?</p> <p>18 A. Please repeat the question.</p> <p>19 Q. As of October 31, 2001, did you have any</p> <p>20 understanding of Treasury's policies on the use of</p> <p>21 embargoes?</p> <p>22 A. Yes.</p>  | <p>1 that were embargoed.</p> <p>2 Q. Now -- and what did you -- again, what did</p> <p>3 understand the term embargo to mean as of October 31,</p> <p>4 2001?</p> <p>5 A. That the media is given information prior</p> <p>6 to public release in order to write their stories.</p> <p>7 Their information is not released to the public until</p> <p>8 an agreed-upon time.</p> <p>9 Q. Did that prohibit the -- now, when you</p> <p>10 talk about "the media," you're talking about the</p> <p>11 media at Treasury press conferences?</p> <p>12 A. I'm referring to the media in general.</p> <p>13 Q. So did the embargo prevent a member of the</p> <p>14 media from disclosing the information to anyone at</p> <p>15 all before a set time?</p> <p>16 A. The embargo prevents a member of the media</p> <p>17 from disclosing the information to the general</p> <p>18 public.</p> <p>19 Q. How do you define the general public?</p> <p>20 A. Someone who does not work for a media</p> <p>21 outlet.</p> <p>22 Q. Well, did it prevent a person who received</p>                                 |
| Page 47   | Page 49   |
| <p>1 Q. What was your understanding?</p> <p>2 A. My understanding, that was -- was that</p> <p>3 embargoes were used to give to the Treasury pressroom</p> <p>4 documents that were not public until an agreed-upon</p> <p>5 time.</p> <p>6 Q. And where did you get this understanding</p> <p>7 from?</p> <p>8 A. From working in the office of public</p> <p>9 affairs.</p> <p>10 Q. And did you have that understanding as of</p> <p>11 October 31, 2001, or after October 31, 2001?</p> <p>12 A. Prior to October 31st.</p> <p>13 Q. And you say you got it from work in the</p> <p>14 office of public affairs between August and October</p> <p>15 31, 2001?</p> <p>16 A. Yes.</p> <p>17 Q. All right. And during those 3 months from</p> <p>18 August 6 until October 31, 2001, how did you arrive</p> <p>19 at that understanding specifically?</p> <p>20 A. Specifically we had a group of reporters</p> <p>21 that worked from the Treasury Department called the</p> <p>22 pressroom. And I witnessed them receiving documents</p> | <p>1 information at a press conference from discussing the</p> <p>2 information with the Treasury employee?</p> <p>3 A. If a reporter was given information as</p> <p>4 embargoed, they could discuss that information with a</p> <p>5 member of the press office if they had questions</p> <p>6 about the material they received.</p> <p>7 Q. Could they discuss it with any other</p> <p>8 member of the Treasury -- or excuse me -- employee of</p> <p>9 the Treasury?</p> <p>10 A. Our policy was that the reporters seeking</p> <p>11 information from officials at the Treasury Department</p> <p>12 had to go through the office of public affairs.</p> <p>13 Q. And was this in writing, this policy?</p> <p>14 A. There was a memo emailed to all Treasury</p> <p>15 officials from the assistant secretary of public</p> <p>16 affairs, Michelle Davis, on behalf of secretary Paul</p> <p>17 O'Neill.</p> <p>18 Q. As of October 31, 2001?</p> <p>19 A. I don't recall the date.</p> <p>20 Q. Do you know if it was before or after</p> <p>21 October 31, 2001?</p> <p>22 A. I don't recall.</p> |

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|--|--|
| <p>1 Q. So you can't recall whether this memo was</p> <p>2 in effect in October of 2001?</p> <p>3 A. No.</p> <p>4 Q. And what was the substance of the memo?</p> <p>5 A. That the office of public affairs plays a</p> <p>6 role at the Treasury Department to liaison with the</p> <p>7 media and that officials should refer any inquiring</p> <p>8 phone calls, emails, office visits to the office of</p> <p>9 public affairs.</p> <p>10 Q. So that a member of the press who received</p> <p>11 alleged embargoed information at a press conference</p> <p>12 could relay that information to his editor during the</p> <p>13 embargo period.</p> <p>14 Correct?</p> <p>15 A. Correct.</p> <p>16 Q. And it was -- could relay it to someone in</p> <p>17 his media outlet.</p> <p>18 Correct?</p> <p>19 A. Correct.</p> <p>20 Q. Was there a written procedure at Treasury</p> <p>21 that said this could be done as of October 31, 2001?</p> <p>22 A. Not to my knowledge.</p> | <p>1 A. We did not tell them that, no.</p> <p>2 Q. Did you specifically tell reporters at any</p> <p>3 time before October 31, 2001, including October 31,</p> <p>4 2001, that they could communicate to someone at their</p> <p>5 media companies or outlets?</p> <p>6 A. I did not, no.</p> <p>7 Q. Okay. Do you know if anybody at Treasury</p> <p>8 ever communicated that to reporters, that they were</p> <p>9 allowed to talk to people at their media outlets?</p> <p>10 A. I have no knowledge of that.</p> <p>11 Q. So how did you develop your understanding</p> <p>12 that reporters could communicate to someone at their</p> <p>13 media outlets as you've defined it?</p> <p>14 A. The reporters in the Treasury pressroom</p> <p>15 for the most part were wire reporters, and so they</p> <p>16 filed wire stories with their editors back at their</p> <p>17 desks at their bureaus, and they were in constant</p> <p>18 communication with their editors about their stories</p> <p>19 that they were filing.</p> <p>20 Q. But did you or anybody else before October</p> <p>21 31 and as of October 31, 2001, ever define or tell</p> <p>22 them who they could communicate to -- who they could</p> |
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| <p>1 Q. Could a member of the press receive the</p> <p>2 embargoed information in a press conference, relay</p> <p>3 the information to any executive at his media</p> <p>4 corporation?</p> <p>5 MS. WILLIAMS: Objection.</p> <p>6 A. I don't know.</p> <p>7 BY MR. THEODOROU:</p> <p>8 Q. Well, you testified that he could -- he</p> <p>9 could relay it to someone in his media outlet.</p> <p>10 Correct?</p> <p>11 A. I did.</p> <p>12 Q. All right. And that would include his</p> <p>13 editor.</p> <p>14 Right?</p> <p>15 A. Correct.</p> <p>16 Q. Could he relay it to someone like the</p> <p>17 chief financial officer of the media outlet?</p> <p>18 A. He should not.</p> <p>19 Q. Well, if he's allowed to relay it to his</p> <p>20 media outlet, did you have a procedure whereby you</p> <p>21 told reporters exactly to whom they could communicate</p> <p>22 the information to at their media corporation?</p>   | <p>1 talk to and who they could not talk to at their media</p> <p>2 companies?</p> <p>3 MS. WILLIAMS: Objection.</p> <p>4 BY MR. THEODOROU:</p> <p>5 Q. Go ahead. You still have to answer.</p> <p>6 A. Not to my knowledge.</p> <p>7 Q. Did you ever before or as of October 31,</p> <p>8 2001, ever tell -- lay down the rules for reporters</p> <p>9 as to whom they could communicate to?</p> <p>10 A. Ever?</p> <p>11 MS. WILLIAMS: Objection.</p> <p>12 BY MR. THEODOROU:</p> <p>13 Q. Yeah.</p> <p>14 As of October 31, 2001.</p> <p>15 A. No.</p> <p>16 Q. Do you remember doing it on October 31,</p> <p>17 2001?</p> <p>18 A. No.</p> <p>19 Q. Turning to October 31, 2001, did you</p> <p>20 address the attendees of the refunding conference?</p> <p>21 A. Yes.</p> <p>22 Q. All right. And did you give -- did you</p>   |

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|---|---|
| <p>1 provide them any guidance as to whom they could talk</p> <p>2 to at the conclusion of the conference?</p> <p>3 A. No, I did not.</p> <p>4 MR. THEODOROU: Why don't we take a</p> <p>5 5-minute break.</p> <p>6 THE VIDEOGRAPHER: Off the record at</p> <p>7 11:03:20 PM -- AM.</p> <p>8 (Recess.)</p> <p>9 THE VIDEOGRAPHER: We're back on the</p> <p>10 record at 11:10:35 AM.</p> <p>11 BY MR. THEODOROU:</p> <p>12 Q. Ms. Holahan, before October 31, 2001, had</p> <p>13 you ever attended any quarterly refunding press</p> <p>14 conferences?</p> <p>15 A. No.</p> <p>16 Q. Before October 31, 2001, had you</p> <p>17 participated in any Treasury press conferences?</p> <p>18 A. Yes.</p> <p>19 Q. How many?</p> <p>20 A. I don't recall the exact number.</p> <p>21 Q. Was it fewer than 5?</p> <p>22 A. No.</p> | <p>1 A. Myself.</p> <p>2 Q. Set by you?</p> <p>3 A. Correct.</p> <p>4 Q. Did you run that time by anybody else or</p> <p>5 get approval for that time?</p> <p>6 A. Yes.</p> <p>7 Q. Who?</p> <p>8 A. Tony Fratto.</p> <p>9 Q. Anybody else review it, the decision?</p> <p>10 A. I don't recall.</p> <p>11 Q. And did you discuss setting the time for</p> <p>12 10 AM with Mr. Fratto?</p> <p>13 A. Yes.</p> <p>14 Q. When did you discuss setting time?</p> <p>15 A. I don't recall.</p> <p>16 Q. Where did you discuss this?</p> <p>17 A. I don't recall.</p> <p>18 Q. Is your decision -- was your decision</p> <p>19 recorded on paper anywhere?</p> <p>20 A. Yes.</p> <p>21 Q. Where?</p> <p>22 A. On the media advisory.</p>   |
| Page 55   | Page 57   |
| <p>1 Q. Fewer than 10?</p> <p>2 A. Yes.</p> <p>3 Q. Did any of them involve embargoed</p> <p>4 information?</p> <p>5 A. I don't recall.</p> <p>6 Q. Now, as of October 31, 2001, what was the</p> <p>7 Treasury Department's policy for setting embargo</p> <p>8 times at quarterly refunding press conferences?</p> <p>9 A. I'm not aware.</p> <p>10 Q. So you're not aware of how the embargo</p> <p>11 time was set?</p> <p>12 A. Prior to that day?</p> <p>13 Q. Or as of October 31, 2001.</p> <p>14 A. I'm aware of how it was set on October</p> <p>15 31st.</p> <p>16 Q. But not before that day?</p> <p>17 A. Correct.</p> <p>18 Q. Okay. How was it set on October 31st?</p> <p>19 A. It was preset at 10 AM.</p> <p>20 Q. Preset to be at a 10 AM embargo time?</p> <p>21 A. Correct.</p> <p>22 Q. By whom?</p>      | <p>1 Q. And that's the document that went out</p> <p>2 before the refunding conference?</p> <p>3 A. Correct.</p> <p>4 Q. Why was 10 AM set to be the embargo time?</p> <p>5 A. To allow enough time for Mr. Fisher's</p> <p>6 statement for the press, question-and-answer period,</p> <p>7 and for the writing and filing of the stories.</p> <p>8 Q. Now, before October 31, 2001, it's your</p> <p>9 testimony you did not know how the embargo times were</p> <p>10 set for the refunding conferences; is that right?</p> <p>11 A. Correct.</p> <p>12 Q. After October 31, 2001, did you learn how</p> <p>13 they were set in the past, the embargo times?</p> <p>14 A. I was aware that the previous quarterly</p> <p>15 refunding, they had done a 10-minute embargo at the</p> <p>16 end of the event.</p> <p>17 Q. Were you aware of a practice whereby a</p> <p>18 public affairs official polled the reporters present</p> <p>19 to determine how much time they needed to write their</p> <p>20 stories?</p> <p>21 A. Yes.</p> <p>22 Q. Did you know about that before the October</p> |

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|--|---|
| <p>1 31, 2001, conference?</p> <p>2 A. Yes.</p> <p>3 Q. But you decided not to use that system?</p> <p>4 A. Correct.</p> <p>5 Q. Why?</p> <p>6 A. Because of the sensitivity of the</p> <p>7 information being disseminated at the press</p> <p>8 conference and because of the question of how to</p> <p>9 handle television cameras.</p> <p>10 Q. Well, how did you know that the</p> <p>11 information at that particular press conference on</p> <p>12 October 31, 2001, had particular sensitivity?</p> <p>13 A. Because I was told that.</p> <p>14 Q. By whom?</p> <p>15 A. Undersecretary Fisher.</p> <p>16 Q. All right. And when was that?</p> <p>17 A. In the weeks leading up to the event.</p> <p>18 Q. What did he say?</p> <p>19 A. I don't recall the exact conversation.</p> <p>20 Q. What was the substance of the</p> <p>21 conversation?</p> <p>22 A. Just that the information, the decision</p>                       | <p>1 October 31, 2001, did Treasury ever require the</p> <p>2 attendees of the conference to stay in the room</p> <p>3 during the embargo period?</p> <p>4 A. I don't recall.</p> <p>5 Q. Before the October 31, 2001, conference,</p> <p>6 to your knowledge, did Treasury ever take any steps</p> <p>7 to prevent the attendees from leaving the room before</p> <p>8 the embargo period had ended?</p> <p>9 A. Not to my knowledge.</p> <p>10 Q. Did -- before the October 31, 2001,</p> <p>11 conference, did Treasury take any steps at -- in</p> <p>12 press conferences where there were embargoes to</p> <p>13 prevent the attendees from making telephone calls</p> <p>14 before the embargo period ended?</p> <p>15 A. I don't recall.</p> <p>16 Q. Before October 31, 2001, how did Treasury</p> <p>17 enforce its embargoes?</p> <p>18 A. If I became aware of an embargo being</p> <p>19 broken, my practice was to speak to the reporter that</p> <p>20 had filed the story early.</p> <p>21 Q. And before October 31st, you had</p> <p>22 supervised press conferences where embargoed</p> |
| Page 59  | Page 61   |
| <p>1 that was being announced at that quarterly refunding</p> <p>2 was going to be something that the markets would care</p> <p>3 a great deal about, and it was very important that</p> <p>4 the information not be mishandled.</p> <p>5 Q. And where did he tell you this?</p> <p>6 A. The best of my recollection, in his</p> <p>7 office.</p> <p>8 Q. Anybody else present?</p> <p>9 A. I don't recall.</p> <p>10 Q. How long was the discussion?</p> <p>11 A. I don't recall.</p> <p>12 Q. Did he say anything to you in writing</p> <p>13 about this?</p> <p>14 A. Not to my recollection.</p> <p>15 Q. But before the October 31, 2001,</p> <p>16 conference, Treasury did not as a practice set the</p> <p>17 embargo times in advance.</p> <p>18 Correct?</p> <p>19 MS. WILLIAMS: Objection.</p> <p>20 A. That is my understanding now, yes.</p> <p>21 BY MR. THEODOROU:</p> <p>22 Q. Now, before the refunding conference of</p> | <p>1 information was released?</p> <p>2 A. I don't recall specific press conference</p> <p>3 where embargoed information was released.</p> <p>4 Q. So you don't recall supervising a press</p> <p>5 conference where market-sensitive information was</p> <p>6 released and there was an embargo before October</p> <p>7 31st?</p> <p>8 A. Correct.</p> <p>9 Q. So before October 31st, you didn't have an</p> <p>10 opportunity to reprimand any reporter for release of</p> <p>11 embargoed information because you can't recall</p> <p>12 whether you handled a conference where there was</p> <p>13 embargoed information; is that right?</p> <p>14 A. In my time at the Treasury Department,</p> <p>15 there was --</p> <p>16 Q. Not your time at Treasury.</p> <p>17 Before October 31, 2001.</p> <p>18 A. I don't recall.</p> <p>19 MS. WILLIAMS: Objection to you cutting</p> <p>20 off the witness.</p> <p>21 A. I don't recall.</p> <p>22 BY MR. THEODOROU:</p>   |

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| <p>1 Q. Turning your attention -- directing your<br/>2 attention to October 31, 2001, the refunding<br/>3 conference, did you address the attendees?<br/>4 A. Yes.<br/>5 Q. What did you say?<br/>6 A. I informed the attendees of the press<br/>7 conference that there would be an embargo in place<br/>8 until 10 AM.<br/>9 Q. Did you tell them what embargo meant?<br/>10 A. I did not.<br/>11 Q. Were you aware that there were attendees<br/>12 who were not members of the press at that conference?<br/>13 A. I was not aware of attendees at the press<br/>14 conference not being members of the press or the<br/>15 Treasury Department.<br/>16 Q. How long did you speak to the audience?<br/>17 A. A few seconds.<br/>18 Q. A few seconds?<br/>19 A. A few seconds.<br/>20 Q. About what time did you address them?<br/>21 A. Approximately 9 AM before the press<br/>22 conference began.</p> | <p>1 MR. THEODOROU: During the time that she<br/>2 was there from October -- she started in August --<br/>3 MS. WILLIAMS: August.<br/>4 MR. THEODOROU: -- to her knowledge before<br/>5 October 31st, 2001.<br/>6 BY MR. THEODOROU:<br/>7 Q. To your knowledge, did Treasury ever<br/>8 obtain the consent of the attendees to abide by<br/>9 the -- by an embargo?<br/>10 A. To my knowledge, no.<br/>11 Q. All right. Did you obtain a consent from<br/>12 anybody who attended the October 31, 2001, refunding<br/>13 conference to abide by the embargo?<br/>14 A. No.<br/>15 Q. Did you ask any of the attendees to<br/>16 express their consent to the terms of the embargo?<br/>17 A. No.<br/>18 Q. So you simply told them an embargo time<br/>19 and assumed that they would honor it?<br/>20 MS. WILLIAMS: Objection.<br/>21 A. I told members of the media the ground<br/>22 rules for the press conference.</p> |
| Page 63  | Page 65   |
| <p>1 Q. As best you can recall, could you please<br/>2 tell us what you said.<br/>3 A. I said, approximately something along the<br/>4 lines of, this information is embargoed until 10 AM.<br/>5 I reannounced -- I reannounced that at the<br/>6 end of the press conference.<br/>7 Q. And about what time was that?<br/>8 A. 9:25 AM.<br/>9 Q. When you addressed them at about 9 AM, you<br/>10 did not tell them what the embargo meant.<br/>11 Correct?<br/>12 A. Correct.<br/>13 Q. When you readdressed them at 9:25 AM, did<br/>14 you tell them what embargo meant?<br/>15 A. No.<br/>16 Q. Do you know before October 31, 2001, if<br/>17 Treasury ever obtained the consent of the attendees<br/>18 at quarterly refunding conferences to abide by the<br/>19 embargoes?<br/>20 MS. WILLIAMS: Objection.<br/>21 And just to clarify, back to the beginning<br/>22 of time, or --</p>             | <p>1 BY MR. THEODOROU:<br/>2 Q. And those ground rules were what?<br/>3 A. There was an embargo in place until 10 AM.<br/>4 MR. THEODOROU: I have an exhibit.<br/>5 (Holahan Exhibit No. 1<br/>6 was marked for<br/>7 identification.)<br/>8 BY MR. THEODOROU:<br/>9 Q. All right. Ms. Holahan, I'm showing you<br/>10 what's been marked as exhibit 1.<br/>11 Do you see that?<br/>12 A. I do see it.<br/>13 Q. Do you recognize that document?<br/>14 A. I do recognize it.<br/>15 Q. And what is it?<br/>16 A. It's a summary of an interview that I gave<br/>17 on November 7th, 2001.<br/>18 Q. And you've seen that document before.<br/>19 Correct?<br/>20 A. Correct.<br/>21 Q. When did you see it the first time?<br/>22 A. When I met with the attorneys from the</p>  |

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|--|---|
| <p>1 Securities and Exchange Commission and the Treasury<br/>2 Department this past spring.<br/>3 Q. And most recently, when did you see it?<br/>4 A. Yesterday.<br/>5 Q. And you reviewed it.<br/>6 Correct?<br/>7 A. I reviewed it at both of those meetings,<br/>8 yes.<br/>9 Q. All right. Now, if you -- since you've<br/>10 reviewed it, if you want to take your time and look<br/>11 at it again, because I'm going to be asking you some<br/>12 questions, you can take the time to look at it.<br/>13 (Pause.)<br/>14 BY MR. THEODOROU:<br/>15 Q. Do you see it?<br/>16 A. I see it.<br/>17 Q. All right. And you recall being<br/>18 interviewed by officials from the SEC and the<br/>19 Treasury Department inspector general's office in<br/>20 2001.<br/>21 Correct?<br/>22 A. Correct.</p>   | <p>1 Q. All right. And what did you tell them<br/>2 about the honor system?<br/>3 A. I explained that there's an agreement<br/>4 between the office of public affairs and the<br/>5 reporters that we will give them information in<br/>6 advance of the event to help them write their<br/>7 stories, we will not post the item on the Web site<br/>8 until the agreed-upon time, the embargo time, and<br/>9 that then they are to hold their stories until said<br/>10 time, and then release them at the same time, so if<br/>11 that agreement is not honored, then we will not give<br/>12 them the privilege of having the information in<br/>13 advance.<br/>14 Q. You remember talking about an agreement<br/>15 with the reporters?<br/>16 A. I don't recall my exact words.<br/>17 Q. Did you are tell reporters what would<br/>18 happen to them if the embargo was not honored?<br/>19 A. When?<br/>20 Q. At the conference, the press conference --<br/>21 A. No, I did not.<br/>22 Q. -- when you spoke on October 31st?</p> |
| Page 67  | Page 69   |
| <p>1 Q. Now, during the interview, you told the<br/>2 SEC and the OIG from the Department of the Treasury<br/>3 that reporters were governed by the honor system not<br/>4 to release the information before the embargo time.<br/>5 Do you remember saying that?<br/>6 MS. WILLIAMS: Objection.<br/>7 MR. ROSSETTI: Which page are you on?<br/>8 Which page are you on, Nick?<br/>9 MR. THEODOROU: I would quote it.<br/>10 BY MR. THEODOROU:<br/>11 Q. Page 2, the end of the first paragraph:<br/>12 She added that she gave -- all right? -- the ground<br/>13 rules and that the reporters are governed by the<br/>14 honor system to not release the information prior to<br/>15 the embargo time.<br/>16 Correct?<br/>17 A. I do recall describing that to the<br/>18 interviewers at that day.<br/>19 Q. Okay. So by looking at this document, it<br/>20 refreshes your recollection about some additional<br/>21 details about what you said that day?<br/>22 A. Yes.</p> | <p>1 A. No.<br/>2 Q. Now, you didn't obtain any consents from<br/>3 them to honor the embargo.<br/>4 Correct?<br/>5 A. Correct.<br/>6 Q. You simply spoke about the embargo time?<br/>7 A. Correct.<br/>8 Q. Now, you testified earlier you addressed<br/>9 the reporters twice.<br/>10 A. That is what --<br/>11 Q. Right?<br/>12 A. -- I recall today, yes.<br/>13 Q. Now, you testified -- not "testified," but<br/>14 when you were interviewed, you said you addressed<br/>15 them 3 times.<br/>16 A. Correct.<br/>17 Q. Does this refresh your recollection as to<br/>18 talking to them a third time?<br/>19 A. Sitting here today --<br/>20 Q. Exhibit 1?<br/>21 A. -- I do not recall addressing them the<br/>22 third time before the question-and-answer period.</p>   |

18 (Pages 66 to 69)

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|---|---|
| <p>1 But this document was taken at a time when</p> <p>2 my memory was obviously a lot fresher.</p> <p>3 Q. Right.</p> <p>4 But I'm asking you for the purpose of</p> <p>5 testimony what your present recollection is.</p> <p>6 A. My present recollection is announcing the</p> <p>7 embargo time at the beginning of the press conference</p> <p>8 and at the conclusion of the press conference.</p> <p>9 Q. Who else from the Department of the</p> <p>10 Treasury spoke at this press conference?</p> <p>11 A. Undersecretary Fisher.</p> <p>12 Q. And other than undersecretary Fisher, were</p> <p>13 you the only person from Treasury to address the</p> <p>14 attendees?</p> <p>15 A. Yes.</p> <p>16 Q. All right. Did undersecretary Fisher talk</p> <p>17 to -- or tell the attendees what the embargo meant?</p> <p>18 A. No, he did not.</p> <p>19 Q. All right. To your knowledge, did anyone</p> <p>20 tell the attendees what embargo meant?</p> <p>21 A. Not to my knowledge.</p> <p>22 Q. You simply announced an embargo time?</p> | <p>1 It was a press conference.</p> <p>2 Q. Were you aware of any instance before</p> <p>3 October 31, 2001, in which an embargo at Treasury was</p> <p>4 violated?</p> <p>5 A. I don't recall a specific instance.</p> <p>6 Q. Okay. How about general instances?</p> <p>7 A. Yes.</p> <p>8 Q. Okay. And what do you recall?</p> <p>9 A. There were times when a reporter's story</p> <p>10 would be filed, a very short period of time before</p> <p>11 the embargo time. Generally, it was an accident, and</p> <p>12 it was only by a minute or so, but it did happen.</p> <p>13 Q. Appreciate you answering beyond the scope</p> <p>14 of my question in that instance.</p> <p>15 How many instances before October 31st did</p> <p>16 this occur?</p> <p>17 A. I don't recall.</p> <p>18 Q. Did anything happen to the person who</p> <p>19 violated the embargo in those instances?</p> <p>20 A. If the person who violated the embargo in</p> <p>21 those instances was turned in to the office of public</p> <p>22 affairs, that person received a phone call from a</p> |
| Page 71   | Page 73   |
| <p>1 A. To the media.</p> <p>2 MS. WILLIAMS: Objection.</p> <p>3 BY MR. THEODOROU:</p> <p>4 Q. To the attendees.</p> <p>5 MS. WILLIAMS: Objection.</p> <p>6 A. To the media. It was a press conference.</p> <p>7 BY MR. THEODOROU:</p> <p>8 Q. Right. Correct.</p> <p>9 You announced an embargo time --</p> <p>10 A. -- to the media.</p> <p>11 Q. Okay. And were you aware that there were</p> <p>12 nonmedia members there?</p> <p>13 A. I was aware there were Treasury staff</p> <p>14 members there in addition to the media.</p> <p>15 Q. But you -- outside of Treasury and the</p> <p>16 media, were you aware that there were other nonmedia</p> <p>17 and non-Treasury attendees at the conference?</p> <p>18 A. No, I was not.</p> <p>19 Q. Okay. So that the embargo time was a</p> <p>20 press embargo time.</p> <p>21 Correct?</p> <p>22 A. Correct.</p>   | <p>1 member of the public affairs staff inquiring as to</p> <p>2 the nature of why the story was filed early and</p> <p>3 reminding them of the practices regarding the</p> <p>4 embargoes and that it was a privilege to receive the</p> <p>5 information in advance of the embargo time.</p> <p>6 Q. Okay. Do you recall before October 31,</p> <p>7 2001, of anybody getting reprimanded by Treasury for</p> <p>8 an advance release of embargoed information, alleged</p> <p>9 embargoed information?</p> <p>10 A. I don't recall a specific instance, no.</p> <p>11 Q. Do you recall anyone before October 31,</p> <p>12 2001, being barred from attending future Treasury</p> <p>13 conferences or meetings because they leaked,</p> <p>14 disclosed alleged embargo information?</p> <p>15 A. No.</p> <p>16 Q. You do?</p> <p>17 A. I said no.</p> <p>18 Q. Oh.</p> <p>19 A. I do not.</p> <p>20 Q. Okay.</p> <p>21 MR. THEODOROU: Another exhibit.</p> <p>22 (Holahan Exhibit No. 2</p>   |

19 (Pages 70 to 73)

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|---|--|
| <p>1 was marked for<br/>2 identification.)<br/>3 BY MR. THEODOROU:<br/>4 Q. Ms. Holahan, I want to show you what's<br/>5 been marked as exhibit 2.<br/>6 Do you see that document?<br/>7 A. I do see it.<br/>8 Q. Did you ever -- have you seen this before,<br/>9 this document?<br/>10 A. Not to my recollection.<br/>11 Q. Why don't you take a look at it, read<br/>12 through it.<br/>13 (Pause.)<br/>14 BY MR. THEODOROU:<br/>15 Q. Have you had a chance to look at it?<br/>16 A. Yes.<br/>17 Q. Now, does that refresh your recollection<br/>18 about any instances where advance information got out<br/>19 before a Treasury announcement?<br/>20 A. Repeat the question, please.<br/>21 Q. All right. Well, if you take a look at<br/>22 the document, you'll see that it deals with advance</p> | <p>1 1528.<br/>2 Q. Correct.<br/>3 Now, the last couple paragraphs in the<br/>4 document state that: Barclay's -- this man's name is<br/>5 John Roberts -- recalled a similar flap earlier this<br/>6 month when the Treasury decided to flood the market<br/>7 with more 10-year notes to ease the liquidity logjam<br/>8 caused by failed trades after the September 11<br/>9 attacks on Washington and New York.<br/>10 And it quotes Mr. Roberts as saying: When<br/>11 they did the reopening of the 10-year, there was<br/>12 advance information on the street. There's advance<br/>13 information here, and so there were a number of<br/>14 people in the street who were pretty upset about it,<br/>15 Roberts said.<br/>16 Now, were you aware of an instance where<br/>17 advance information got out before Treasury's<br/>18 intermediate issuance of the 10-year notes?<br/>19 A. No, I'm not.<br/>20 Q. You don't recall that incident?<br/>21 A. No.<br/>22 Q. Do you know if that incident was -- have</p> |
| Page 75   | Page 77  |
| <p>1 information getting out before Treasury's<br/>2 intermediate issuance of 10-year notes on October<br/>3 4th, 2001.<br/>4 Correct?<br/>5 If you look at the lower portion of the<br/>6 document.<br/>7 A. M-hm.<br/>8 Q. Last paragraph -- 2 paragraphs.<br/>9 A. Okay. I'm sorry.<br/>10 I was looking for the date.<br/>11 Yes, I do see the last 2 paragraphs, m-hm.<br/>12 Q. And the document is -- it's a -- what is<br/>13 the document?<br/>14 It's a Reuters report.<br/>15 Correct?<br/>16 A. It's a story, yes, a wire story.<br/>17 Q. It's a story from Reuters which talks<br/>18 about what happened at Treasury on 10-31-<br/>19 A. Correct.<br/>20 Q. -- 2001?<br/>21 Correct?<br/>22 A. That's the date the story was filed at</p>  | <p>1 you ever heard of that incident happening where there<br/>2 was concern about something happening on October 4th,<br/>3 2001, concerning 10-year notes?<br/>4 A. I recall the issuance of the 10-year<br/>5 notes, but I do not recall --<br/>6 Q. -- an issue about advance information?<br/>7 A. No.<br/>8 Q. So do you recall whether Treasury ever<br/>9 investigated advance information getting out about<br/>10 the 10-year notes in early October?<br/>11 A. I have no knowledge of that.<br/>12 Q. All right.<br/>13 MR. THEODOROU: Another exhibit.<br/>14 (Holahan Exhibit No. 3<br/>15 was marked for<br/>16 identification.)<br/>17 BY MR. THEODOROU:<br/>18 Q. I'm showing you now, Ms. Holahan, what's<br/>19 been marked as exhibit 3.<br/>20 Do you see that?<br/>21 A. I do.<br/>22 Q. All right. Have you seen that document</p>   |

20 (Pages 74 to 77)

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|--|--|
| <p>1 before, the Bloomberg report dated 10-31-01?</p> <p>2 A. I don't specifically recall seeing this</p> <p>3 news story, but I know this reporter, and so I'm</p> <p>4 quite sure I saw it at the time.</p> <p>5 Q. All right. Why don't you take a look</p> <p>6 through just to refresh your recollection.</p> <p>7 (Pause.)</p> <p>8 BY MR. THEODOROU:</p> <p>9 Q. Have you had a chance to review it?</p> <p>10 A. Almost.</p> <p>11 (Pause.)</p> <p>12 A. Okay.</p> <p>13 BY MR. THEODOROU:</p> <p>14 Q. You see where the report refers to -- I'll</p> <p>15 quote it: Treasury -- this report by Bloomberg</p> <p>16 concerns the October 31, 2001, refunding conference</p> <p>17 Correct?</p> <p>18 A. Correct.</p> <p>19 Q. And it talks about the information getting</p> <p>20 out on the Treasury Web site before 10 AM.</p> <p>21 Correct?</p> <p>22 A. Correct.</p>   | <p>1 MR. THEODOROU: No, no.</p> <p>2 22nd I thought I said.</p> <p>3 MR. ROSSETTI: You said, October 21st.</p> <p>4 BY MR. THEODOROU:</p> <p>5 Q. Do you recall that incident on October</p> <p>6 22nd, 2001, in which deputy Treasury secretary Dam's</p> <p>7 comments were posted on the Web site almost an hour</p> <p>8 before he began?</p> <p>9 A. No.</p> <p>10 Q. Did anybody bring that issue to your</p> <p>11 attention before the October 31st refunding</p> <p>12 conference?</p> <p>13 A. Not to my recollection.</p> <p>14 Q. Did you coordinate that press conference</p> <p>15 with deputy Treasury secretary Dam?</p> <p>16 A. No.</p> <p>17 Q. Who did?</p> <p>18 A. I don't know who did specifically, but I</p> <p>19 know who handled his media.</p> <p>20 Q. Who handled his media?</p> <p>21 A. Rob Nichols was the deputy assistant</p> <p>22 secretary of public affairs at that time and deputy --</p>                                 |
| Page 79  | Page 81  |
| <p>1 Q. All right. But it also says: Treasury</p> <p>2 officials declined to comment on the early release</p> <p>3 other than to confirm it occurred. It was the second</p> <p>4 time the department has posted embargoed information</p> <p>5 on the Web site before it was scheduled to enter the</p> <p>6 public domain. On October 22nd the Treasury posted</p> <p>7 remarks by deputy Treasury secretary Kenneth Dam</p> <p>8 almost an hour before he spoke about the government's</p> <p>9 efforts to curb terrorist financing.</p> <p>10 Do you see where it says that?</p> <p>11 A. I see that.</p> <p>12 Q. All right. Now, do you recall that</p> <p>13 incident on October 21st, 2001, in which remarks by</p> <p>14 deputy Treasury secretary Dam were posted on the Web</p> <p>15 site an hour before he began his remarks?</p> <p>16 MS. WILLIAMS: October 22nd?</p> <p>17 MR. THEODOROU: Yes.</p> <p>18 A. I do not recall that.</p> <p>19 Q. October 22nd, 2001.</p> <p>20 (Talking at the same time.)</p> <p>21 MS. WILLIAMS: You said October 21st.</p> <p>22 I was just trying to clear --</p> | <p>1 Treasury secretary Dam was his principal. Tasia</p> <p>2 Scolinos handled terrorist financing.</p> <p>3 Q. Who did?</p> <p>4 A. Tasia, T-A-S-I-A.</p> <p>5 Q. T-A-F-I-A?</p> <p>6 A. T-A-, S as in Sam, -I-A, Scolinos, S as</p> <p>7 in Sam, -C-O-L-I-, N as in Nancy, -O-, S as in Sam.</p> <p>8 Q. That's one name I can pronounce, Tasia</p> <p>9 Scolinos.</p> <p>10 A. She handled the issue of terrorist</p> <p>11 finance.</p> <p>12 So one of those 2 or both together most</p> <p>13 likely handled that press conference.</p> <p>14 Q. And Tasia worked in what department?</p> <p>15 A. She worked in the office of public</p> <p>16 affairs. She was the spokesperson for terrorist</p> <p>17 finance.</p> <p>18 Q. And she reported to whom?</p> <p>19 A. Tony Fratto.</p> <p>20 Q. Well, do you remember her -- or did</p> <p>21 anybody in the office of public affairs ever discuss</p> <p>22 with you the early disclosure of embargoed</p> |

21 (Pages 78 to 81)

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|---|--|
| <p>1 information of Kenneth Dam's remarks?</p> <p>2 A. I don't recall.</p> <p>3 Q. Do you know if any investigation was</p> <p>4 conducted of that incident?</p> <p>5 A. I don't have any knowledge of that.</p> <p>6 Q. Did you learn anything about this early</p> <p>7 disclosure of secretary Dam's remarks after October</p> <p>8 31st?</p> <p>9 A. I have no recollection of that.</p> <p>10 Q. In other words, when people became</p> <p>11 concerned about what happened on October 31st at the</p> <p>12 refunding conference, did anybody talk to you about</p> <p>13 what happened with secretary Dam's press conference?</p> <p>14 A. I don't recall any conversations taking</p> <p>15 place.</p> <p>16 Q. So you had no involvement in coordinating</p> <p>17 secretary Dam's conference; is that right?</p> <p>18 A. That's correct.</p> <p>19 Q. And to your recollection, Tasia Scolinos</p> <p>20 may have been involved in it?</p> <p>21 A. I'm making an assumption.</p> <p>22 Q. Do you know who was responsible for</p> | <p>1 Strike that.</p> <p>2 THE VIDEOGRAPHER: Excuse me,</p> <p>3 Mr. Theodorou.</p> <p>4 I need to change the tape in a minute.</p> <p>5 MR. THEODOROU: Oh, okay.</p> <p>6 He's going to change the tape.</p> <p>7 THE VIDEOGRAPHER: This is the end of tape</p> <p>8 number 1 of the video deposition of Elizabeth</p> <p>9 Holahan. Off the record at 11:45:42 AM on August</p> <p>10 23rd, 2006.</p> <p>11 (Recess.)</p> <p>12 THE VIDEOGRAPHER: This is the beginning</p> <p>13 of tape number 2 in the video deposition of</p> <p>14 Ms. Elizabeth Holahan. On the record at 11:50:26 AM</p> <p>15 on August 23rd, 2006.</p> <p>16 BY MR. THEODOROU:</p> <p>17 Q. Ms. Holahan, earlier, you testified about</p> <p>18 a conversation you had with secretary Fisher about</p> <p>19 the sensitivity of the information at the refunding</p> <p>20 conference.</p> <p>21 Correct?</p> <p>22 A. Correct.</p>   |
| Page 83   | Page 85  |
| <p>1 posting secretary Dam's remarks on the Treasury Web</p> <p>2 site?</p> <p>3 A. I know who was responsible for posting all</p> <p>4 documents on the Web site.</p> <p>5 Q. Who was that?</p> <p>6 A. Frances Anderson.</p> <p>7 Q. And who is Frances Anderson?</p> <p>8 A. She's an administrative assistant within</p> <p>9 the office of public affairs.</p> <p>10 Q. And did she report to you?</p> <p>11 A. No, she did not.</p> <p>12 Q. Whom did she report to?</p> <p>13 A. Tony Fratto.</p> <p>14 Q. Did you ever hear about any Treasury</p> <p>15 employee being reprimanded about the Dam incident?</p> <p>16 MR. McGIVERN: Objection.</p> <p>17 A. Not to my recollection.</p> <p>18 BY MR. THEODOROU:</p> <p>19 Q. Not to your recollection?</p> <p>20 A. No.</p> <p>21 Q. Are you aware of any changes that Treasury</p> <p>22 made to its embargo procedures — excuse me.</p>   | <p>1 Q. All right. Did secretary Fisher make a</p> <p>2 proposal to put the announcement in the Internet</p> <p>3 immediately at the start of the press conference?</p> <p>4 A. He did.</p> <p>5 Q. And what do you remember him saying?</p> <p>6 A. My recollection is that he suggested that</p> <p>7 the information be released live without an embargo</p> <p>8 time.</p> <p>9 Q. And why wasn't his proposal implemented?</p> <p>10 A. Tony Fratto objected.</p> <p>11 Q. What did Mr. Fratto say?</p> <p>12 A. To paraphrase, his concern was that there</p> <p>13 would be TV cameras there, and for cameras to come</p> <p>14 and carry something live, we would have to give them</p> <p>15 some type of advance indication of what was to be</p> <p>16 announced.</p> <p>17 Q. Were there TV cameras at the refunding</p> <p>18 conference?</p> <p>19 A. There were.</p> <p>20 Q. From what outlets?</p> <p>21 A. I don't recall.</p> <p>22 Q. What did secretary Fisher say to</p> |

22 (Pages 82 to 85)

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|--|---|
| <p>1 Mr. Fratto?</p> <p>2 A. I don't recall the exact conversation.</p> <p>3 Q. Well, you do remember Mr. Fratto talking</p> <p>4 to secretary Fisher about the issue?</p> <p>5 A. I do.</p> <p>6 Q. And again what do you remember?</p> <p>7 A. I remember that undersecretary Fisher made</p> <p>8 a suggestion. I relayed it to Mr. Fratto.</p> <p>9 Mr. Fratto objected, and Mr. Fratto and</p> <p>10 Mr. Fisher and myself had a quick meeting in</p> <p>11 Mr. Fisher's office, where both sides stated their --</p> <p>12 sort of their position, and Mr. Fisher agreed to go</p> <p>13 with Mr. Fratto's plan of having it released with an</p> <p>14 embargo time.</p> <p>15 Q. And what did Mr. Fisher say?</p> <p>16 A. I don't recall his exact words.</p> <p>17 Q. Well, what do you remember generally?</p> <p>18 A. I remember generally that he did not think</p> <p>19 that was a good idea.</p> <p>20 Q. And what do you remember Mr. Fratto saying</p> <p>21 in response?</p> <p>22 A. I don't recall exactly what he said.</p> | <p>1 with Mr. Fratto and Mr. Fisher saying that he was --</p> <p>2 he was -- you know, I'm paraphrasing here -- that he</p> <p>3 was generally, you know, uncomfortable with an</p> <p>4 embargo with the opportunity for the information to</p> <p>5 leak out somehow, and that I recall Mr. Fratto</p> <p>6 explaining to him that -- I do remember him</p> <p>7 explaining that there's always an embargo at these</p> <p>8 events and that we have to allow for the television</p> <p>9 cameras to be there, but for them to come and do it</p> <p>10 live, they have to bring their satellite trucks.</p> <p>11 Satellite trucks require parking, being parked at the</p> <p>12 curb, running the lines into the building up into</p> <p>13 this room. It's a great deal of setup.</p> <p>14 So for the TV cameras to do that, we would</p> <p>15 have to give them some sort of advance notice of what</p> <p>16 we were going to be announcing, and that in itself</p> <p>17 would be more likely to result in a problem or a leak</p> <p>18 of information. So therefore, it was advisable to</p> <p>19 have the embargo in place.</p> <p>20 And I remember I recall Mr. Fisher</p> <p>21 basically deferring to Mr. Fratto on this, saying</p> <p>22 that, you are -- you know, this is your area of</p> |
| Page 87  | Page 89   |
| <p>1 Q. Well, what do you remember generally?</p> <p>2 A. That he thought that everything would be</p> <p>3 fine and that this was the way to handle the event.</p> <p>4 Q. That everything would be fine how?</p> <p>5 MS. WILLIAMS: Objection.</p> <p>6 A. I'm just giving you an indication of the</p> <p>7 conversation as I recall it.</p> <p>8 BY MR. THEODOROU:</p> <p>9 Q. I thought you testified earlier that you</p> <p>10 remembered him talking about television cameras.</p> <p>11 A. I do.</p> <p>12 Q. All right. Did he talk to Mr. Fisher</p> <p>13 about television cameras?</p> <p>14 A. Yes, he did.</p> <p>15 Q. All right. So you remember a little bit</p> <p>16 more?</p> <p>17 A. I remember the general conversation as</p> <p>18 I've described it to you.</p> <p>19 Q. All right. Just so I'm not confused, why</p> <p>20 don't you describe for me what you remember about</p> <p>21 that conversation.</p> <p>22 A. I remember sitting in Mr. Fisher's office</p>   | <p>1 expertise, I don't agree, but I will go along with</p> <p>2 it.</p> <p>3 And I'm paraphrasing all of that.</p> <p>4 Q. That the advance notice of the conference</p> <p>5 Mr. Fratto said would lead to a potential leak?</p> <p>6 MS. WILLIAMS: Objection.</p> <p>7 A. To the best of my recollection, he was</p> <p>8 explaining to Mr. Fisher that to call a TV producer</p> <p>9 and say that we were having a live event at the</p> <p>10 Treasury Department, we would need to give them</p> <p>11 additional details about what was to be announced.</p> <p>12 And that in itself could tip off the</p> <p>13 market that there was going to be a big</p> <p>14 announcement.</p> <p>15 BY MR. THEODOROU:</p> <p>16 Q. That it was a live event?</p> <p>17 A. Correct.</p> <p>18 MS. WILLIAMS: Objection.</p> <p>19 A. If it were to be a live event.</p> <p>20 BY MR. THEODOROU:</p> <p>21 Q. Because you actually did give media</p> <p>22 outlets advance notice of the conference.</p>  |

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|--|--|
| <p>1 Correct?</p> <p>2 A. Yes.</p> <p>3 In a media advisory, we did alert them</p> <p>4 that an event would take place. That was standard</p> <p>5 operating procedure.</p> <p>6 You could not have an event without</p> <p>7 letting the media know to come and cover it.</p> <p>8 Q. I'm trying to understand what the</p> <p>9 distinction is between what you actually did and what</p> <p>10 Mr. Fratto's concern was.</p> <p>11 What was it?</p> <p>12 MS. WILLIAMS: Objection.</p> <p>13 A. Restate the question, please.</p> <p>14 BY MR. THEODOROU:</p> <p>15 Q. I'm trying to understand the distinction</p> <p>16 between what you actually did, which is to give the</p> <p>17 media advance notice of the conference, and what</p> <p>18 Mr. Fratto's concern was about giving the media</p> <p>19 advance notice of the conference.</p> <p>20 MS. WILLIAMS: Objection.</p> <p>21 A. And what is your question?</p> <p>22 BY MR. THEODOROU:</p> | <p>1 play the event live versus taping it and playing it</p> <p>2 later, you were giving them advance warning that it's</p> <p>3 going to be a significant announcement.</p> <p>4 Q. Now, directing your attention again to the</p> <p>5 October 31st conference, how was that conference</p> <p>6 scheduled?</p> <p>7 A. I don't understand the question.</p> <p>8 Q. Well, how was it announced?</p> <p>9 A. Announced to the media?</p> <p>10 MS. WILLIAMS: Objection.</p> <p>11 BY MR. THEODOROU:</p> <p>12 Q. Yes.</p> <p>13 A. Announced to the media via a media</p> <p>14 advisory.</p> <p>15 Q. And what is a media advisory?</p> <p>16 A. A media advisory is a standard operating</p> <p>17 procedure where the public affairs office announces</p> <p>18 that an event will take place, and it gives details</p> <p>19 as to the time, date, and location of the event.</p> <p>20 At the Treasury Department, because you</p> <p>21 have to get into the building through Secret Service,</p> <p>22 our media advisories also included information about</p> |
| Page 91  | Page 93  |
| <p>1 Q. What is the distinction between the 2?</p> <p>2 Seems like there was none.</p> <p>3 MS. WILLIAMS: Objection.</p> <p>4 BY MR. THEODOROU:</p> <p>5 Q. You did it anyway.</p> <p>6 MS. WILLIAMS: Objection, mischaracterizes</p> <p>7 testimony.</p> <p>8 A. I shouldn't answer on behalf of</p> <p>9 Mr. Fratto.</p> <p>10 BY MR. THEODOROU:</p> <p>11 Q. Okay.</p> <p>12 A. He could tell you what the distinction</p> <p>13 is --</p> <p>14 Q. Okay.</p> <p>15 A. -- and why he made the argument.</p> <p>16 Q. But do you see any distinction between</p> <p>17 Mr. Fratto's concern and what you did anyway?</p> <p>18 A. Yes.</p> <p>19 Q. What was the distinction?</p> <p>20 A. The distinction is, we very rarely held</p> <p>21 events that were live where the news was announced</p> <p>22 live without an embargo, so if the TV cameras were to</p>  | <p>1 how to be cleared in for the event through the office</p> <p>2 of public affairs.</p> <p>3 Q. And is the media advisory also printed on</p> <p>4 the Web site?</p> <p>5 A. Yes.</p> <p>6 I believe that most media advisories were</p> <p>7 posted on the Web site.</p> <p>8 Q. And was the media advisory to your</p> <p>9 knowledge concerning the October 31st conference on</p> <p>10 the Web site?</p> <p>11 A. It's my understanding that it was posted</p> <p>12 on the Web site.</p> <p>13 MR. THEODOROU: Another exhibit.</p> <p>14 (Holahan Exhibit No. 4</p> <p>15 was marked for</p> <p>16 identification.)</p> <p>17 (Discussion off the record.)</p> <p>18 BY MR. THEODOROU:</p> <p>19 Q. I want to direct your attention to what's</p> <p>20 been marked as exhibit 4.</p> <p>21 Do you see that?</p> <p>22 A. I do see it.</p>  |

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|---|--|
| <p>1 Q. Have you seen it before?</p> <p>2 A. I have.</p> <p>3 Q. When was the last time you saw it?</p> <p>4 A. Yesterday.</p> <p>5 Q. What is it?</p> <p>6 A. It's a media advisory.</p> <p>7 Q. For what?</p> <p>8 A. For the October 31st quarterly refunding</p> <p>9 news conference.</p> <p>10 Q. Were you involved in drafting this</p> <p>11 document?</p> <p>12 A. Yes, I was.</p> <p>13 Q. What did you draft?</p> <p>14 A. I wrote the media advisory and I -- I</p> <p>15 wrote it.</p> <p>16 Q. Was anyone else involved in the draft of</p> <p>17 this document?</p> <p>18 A. It was reviewed by others.</p> <p>19 Q. Reviewed by whom?</p> <p>20 A. Tony Fratto.</p> <p>21 Q. Anybody else?</p> <p>22 A. Not that I recall.</p>  | <p>1 Q. Was it your practice when it concerned</p> <p>2 press conferences that you organized and were</p> <p>3 responsible for and involved announcements on the Web</p> <p>4 site -- was it your practice to authorize</p> <p>5 Ms. Anderson to place announcements on the Web site?</p> <p>6 A. It was my practice to request that she</p> <p>7 post items on the Web site.</p> <p>8 Q. Now, this was posted on the Web site to</p> <p>9 your knowledge.</p> <p>10 Correct?</p> <p>11 A. Correct.</p> <p>12 Q. All right. You also said that you</p> <p>13 notified certain members of the media yourself; is</p> <p>14 that right?</p> <p>15 A. Correct.</p> <p>16 Q. Whom did you notify?</p> <p>17 A. I don't have a specific list in my head of</p> <p>18 reporters that I had on my press list, but I had a</p> <p>19 list of reporters.</p> <p>20 Q. Well, do you recall notifying anybody</p> <p>21 about this notice?</p> <p>22 A. As I said I don't specifically remember</p>   |
| Page 95   | Page 97  |
| <p>1 Q. Were you involved in the distribution of</p> <p>2 this document to the media?</p> <p>3 A. Somewhat.</p> <p>4 Q. How?</p> <p>5 A. I believe that it was posted to the Web</p> <p>6 site by Frances Anderson and that I emailed it to</p> <p>7 reporters from my personal computer in my office.</p> <p>8 Q. Was posted by Frances Anderson on the</p> <p>9 Treasury Web site?</p> <p>10 A. That is my assumption.</p> <p>11 Q. Did you authorize Ms. Anderson to post it</p> <p>12 on the Web site?</p> <p>13 A. I don't recall specifically giving her</p> <p>14 those instructions, but it would be not unusual for</p> <p>15 it to be posted and for me to have given it to her.</p> <p>16 Q. So it's fair to say it was your practice</p> <p>17 to authorize Ms. Anderson to post press releases or</p> <p>18 announcements on the Web site.</p> <p>19 Correct?</p> <p>20 MS. WILLIAMS: Objection.</p> <p>21 A. Repeat the question, please.</p> <p>22 BY MR. THEODOROU:</p> | <p>1 emailing this out, but I'm reasonably certain that I</p> <p>2 did.</p> <p>3 Q. Do you recall who were the reporters on</p> <p>4 your list?</p> <p>5 A. I recall members of the Treasury pressroom</p> <p>6 were on the list. I recall that reporters from</p> <p>7 newspapers such as the Wall Street Journal, The New</p> <p>8 York Times, Washington Post, the Financial Times, and</p> <p>9 other financial publications would be on that list.</p> <p>10 Q. And when you say, members of the Treasury</p> <p>11 pressroom, are these members of the press who are</p> <p>12 credentialed by Treasury?</p> <p>13 A. Yes, they are.</p> <p>14 Q. And who determines their credentials?</p> <p>15 A. It's my understanding that their</p> <p>16 credentials are reviewed by senior members of the</p> <p>17 office of public affairs before issued.</p> <p>18 Q. And who would have been in October 31,</p> <p>19 2001, the senior members of the office of public</p> <p>20 affairs who reviewed the credentials of the press and</p> <p>21 allowed them to become members of the Treasury</p> <p>22 pressroom?</p> |

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|--|--|
| <p>1 A. At that time, the senior members of the</p> <p>2 office of public affairs were Michelle Davis,</p> <p>3 assistant secretary for public affairs, Rob Nichols</p> <p>4 was the deputy assistant secretary for public</p> <p>5 affairs, and Tony Fratto was the director of public</p> <p>6 affairs.</p> <p>7 Q. Now, you said that you contacted certain</p> <p>8 newspapers yourself; is that right?</p> <p>9 A. Correct.</p> <p>10 Q. Okay. Whom did -- what newspapers were</p> <p>11 they?</p> <p>12 A. On my press list?</p> <p>13 Q. Yes.</p> <p>14 A. A variety of reporters on my press list.</p> <p>15 Some of the examples I gave you were the</p> <p>16 Wall Street Journal, The New York Times, The</p> <p>17 Washington Post, the Financial Times. There were</p> <p>18 others.</p> <p>19 Q. Who did you contact at the Wall Street</p> <p>20 Journal?</p> <p>21 A. When?</p> <p>22 Q. October 2001.</p>  | <p>1 A. Floyd Norris was a columnist at The New</p> <p>2 York Times.</p> <p>3 Q. How about The Washington Post?</p> <p>4 A. At that time, John Barry was at the</p> <p>5 Washington Post.</p> <p>6 And there were others, but I don't recall.</p> <p>7 Q. How about the Financial Times?</p> <p>8 A. Reporters that have since left, I don't</p> <p>9 recall the names.</p> <p>10 Q. Now, why would you go out of your way to</p> <p>11 call them about these conferences?</p> <p>12 MS. WILLIAMS: Objection.</p> <p>13 A. I didn't say that I called them.</p> <p>14 BY MR. THEODOROU:</p> <p>15 Q. You said you called people on your list</p> <p>16 about this.</p> <p>17 A. I emailed them the media advisory.</p> <p>18 Q. I'm sorry.</p> <p>19 You're right.</p> <p>20 Why would you contact them?</p> <p>21 A. To let them know the event was taking</p> <p>22 place.</p>                               |
| Page 99  | Page 101   |
| <p>1 A. October what?</p> <p>2 Q. October 31st, 2001, about this notice.</p> <p>3 A. I don't recall.</p> <p>4 Q. Who was your contact at the Wall Street</p> <p>5 Journal in --</p> <p>6 A. There were a number of reporters at the</p> <p>7 Wall Street Journal that I talked to on a regular</p> <p>8 basis.</p> <p>9 Q. And who were some of those reporters that</p> <p>10 you can recall?</p> <p>11 A. I can recall Greg Ip being a reporter that</p> <p>12 I spoke to on a regular basis, Jake Schlesinger,</p> <p>13 David Wessel, Mike Schroeder.</p> <p>14 There were others.</p> <p>15 Q. All right. And who do you recall at The</p> <p>16 New York Times?</p> <p>17 A. The reporter at The New York Times who</p> <p>18 covered the Treasury Department at that time I</p> <p>19 believe was Richard Stevenson, but there were other</p> <p>20 reporters in New York as well that we worked with.</p> <p>21 Jonathan Fuerbringer.</p> <p>22 Q. Anybody else that you can recall?</p> | <p>1 Q. And why was that?</p> <p>2 Why couldn't they just check the Web site</p> <p>3 on their own?</p> <p>4 Why did you give them advance notice?</p> <p>5 A. It was standard operating procedure to</p> <p>6 alert the media to an event.</p> <p>7 Q. Well, when you say, the media, you're not</p> <p>8 talking about any media.</p> <p>9 You're talking about -- you're not talking</p> <p>10 about the Lowell Sun (phonetic) and Lowell Mast</p> <p>11 (phonetic).</p> <p>12 A. Right.</p> <p>13 Q. I mean, you're talking about -- so --</p> <p>14 THE COURT REPORTER: I'm sorry?</p> <p>15 MR. THEODOROU: The Lowell (phonetic) --</p> <p>16 (indiscernible).</p> <p>17 BY MR. THEODOROU:</p> <p>18 Q. You're not talking about any media.</p> <p>19 You're not talking about --</p> <p>20 (indiscernible).</p> <p>21 A. I'm talking about financial reporters for</p> <p>22 national publications.</p> |

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| <p>1 Q. National publications.</p> <p>2 A. Correct.</p> <p>3 Q. And who made the call as to which national</p> <p>4 publications should be provided this advance notice?</p> <p>5 A. For my list, I created the list. I</p> <p>6 decided.</p> <p>7 Q. You decided.</p> <p>8 A. They were reporters that wrote about the</p> <p>9 Treasury Department and that showed an interest in</p> <p>10 the activities of the Treasury Department.</p> <p>11 Q. Now, how did the office of public affairs</p> <p>12 know when a refunding conference was going to take</p> <p>13 place?</p> <p>14 How did they find out?</p> <p>15 A. To the best of my recollection, the</p> <p>16 refunding events were scheduled by the office of</p> <p>17 domestic finance and that they were on -- they were</p> <p>18 on, you know, their calendar. So as the media</p> <p>19 liaison between the office of public affairs and the</p> <p>20 office of domestic finance, I would have been alerted</p> <p>21 to that particular event by someone in the office of</p> <p>22 domestic finance.</p> | <p>1 Correct?</p> <p>2 A. Can you rephrase the question.</p> <p>3 Q. You testified earlier that you did have a</p> <p>4 conversation before the conference with Treasury</p> <p>5 secretary Fisher about the conference?</p> <p>6 A. Regarding the embargo.</p> <p>7 MS. WILLIAMS: Objection.</p> <p>8 BY MR. THEODOROU:</p> <p>9 Q. Regarding the embargo?</p> <p>10 A. Correct.</p> <p>11 Q. All right. But you don't -- you can't</p> <p>12 recall when you first learned that he was going to</p> <p>13 deliver the remarks?</p> <p>14 A. No.</p> <p>15 Q. Now, the event -- you drafted this</p> <p>16 document?</p> <p>17 A. Yes.</p> <p>18 Q. Okay. Now, when it talks about an</p> <p>19 embargo, if you look at the second paragraph, it</p> <p>20 mentions news embargo; isn't that right?</p> <p>21 A. Yes.</p> <p>22 Q. All right. Now, did the Treasury</p>   |
| Page 103   | Page 105   |
| <p>1 Q. And how did you find out about this</p> <p>2 particular October 31st refunding conference?</p> <p>3 A. I don't recall.</p> <p>4 Q. Was it the practice of the office of</p> <p>5 public affairs to distribute these media advisories</p> <p>6 about upcoming quarterly refunding conferences?</p> <p>7 A. Yes.</p> <p>8 Q. Now, turning your direction to the</p> <p>9 exhibit, it says on the first paragraph, Treasury</p> <p>10 undersecretary for domestic finance, Peter R. Fisher,</p> <p>11 will announce the U.S. government's quarterly</p> <p>12 refunding needs at a news conference at 9 AM EDT on</p> <p>13 Wednesday, October 31, 2001.</p> <p>14 Do you see that?</p> <p>15 A. I do.</p> <p>16 Q. Okay. When did you first learn that</p> <p>17 undersecretary Fisher was going to deliver those</p> <p>18 remarks?</p> <p>19 A. I don't recall.</p> <p>20 Q. You testified earlier you did have a</p> <p>21 conversation with Treasury secretary Fisher -- excuse</p> <p>22 me -- secretary Fisher about the conference.</p>                           | <p>1 Department define what a news embargo was in any</p> <p>2 document as of October 31, 2001?</p> <p>3 A. Not to my knowledge.</p> <p>4 Q. All right. To your knowledge, is news</p> <p>5 embargo defined anywhere?</p> <p>6 MS. WILLIAMS: Objection.</p> <p>7 A. In the world?</p> <p>8 BY MR. THEODOROU:</p> <p>9 Q. Yeah.</p> <p>10 To your knowledge have you ever seen any</p> <p>11 kind of definition on what a news embargo is in a</p> <p>12 regulation document or anywhere else?</p> <p>13 MS. WILLIAMS: Objection.</p> <p>14 A. I myself have not seen such a description.</p> <p>15 BY MR. THEODOROU:</p> <p>16 Q. Okay. Doesn't talk about a general</p> <p>17 embargo, does it?</p> <p>18 MS. WILLIAMS: Objection, vague.</p> <p>19 A. Rephrase the question.</p> <p>20 BY MR. THEODOROU:</p> <p>21 Q. Well, what is a news embargo?</p> <p>22 A. A news that it's being given as embargoed</p> |

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|--|--|
| <p>1 until 10 AM.</p> <p>2 Q. Yeah, a news embargo.</p> <p>3 And it applies to whom?</p> <p>4 A. The members of the media who are being</p> <p>5 invited to attend the press conference.</p> <p>6 Q. Now, again directing your attention to</p> <p>7 October 31, 2001, who was allowed to attend the</p> <p>8 quarterly refunding conferences?</p> <p>9 A. Are you referring to the press conference?</p> <p>10 Q. Yes.</p> <p>11 When I say, refunding conference, I mean,</p> <p>12 press conference also.</p> <p>13 MR. ROSSETTI: Just for your</p> <p>14 clarification, there's --</p> <p>15 MR. THEODOROU: I know there's --</p> <p>16 MR. ROSSETTI: -- a 3-day thing.</p> <p>17 BY MR. THEODOROU:</p> <p>18 Q. I'm talking about the actual October 31st,</p> <p>19 9 AM conference.</p> <p>20 Who is allowed to attend that conference,</p> <p>21 the refunding --</p> <p>22 A. Members of the media are invited to</p>                                     | <p>1 A. As I just said, news events hosted by the</p> <p>2 office of public affairs were open to all</p> <p>3 credentialed news media.</p> <p>4 Q. And what was the process in obtaining</p> <p>5 credentials?</p> <p>6 In other words, if I wanted to attend the</p> <p>7 press conference, what would I be required to do?</p> <p>8 A. I'm speculating here, but if you called</p> <p>9 the office of public affairs and wanted to attend an</p> <p>10 event, you would be asked, what media outlet are you</p> <p>11 associated with.</p> <p>12 If you did not have a media outlet, you</p> <p>13 would be told you could not attend.</p> <p>14 Q. What do you mean by, a media outlet?</p> <p>15 A. Do you write for a newspaper, do you have</p> <p>16 a radio program, do you have a television program.</p> <p>17 Q. And did the office of public affairs look</p> <p>18 for some kind of proof that the person was actually</p> <p>19 from a newspaper, radio program, or television</p> <p>20 station?</p> <p>21 A. In order to be cleared into the building,</p> <p>22 you have to present your -- you have to give your</p> |
| Page 107   | Page 109   |
| <p>1 attend.</p> <p>2 Q. Is anyone else invited?</p> <p>3 A. Not to my knowledge.</p> <p>4 Q. To your knowledge, were private business</p> <p>5 consultants ever allowed to attend those conferences?</p> <p>6 MS. WILLIAMS: Objection.</p> <p>7 A. The office of public affairs which hosted</p> <p>8 the news conference did not invite anyone except for</p> <p>9 the media.</p> <p>10 BY MR. THEODOROU:</p> <p>11 Q. Well, who at Treasury was responsible for</p> <p>12 deciding who could attend the press conferences?</p> <p>13 A. News conferences were open to all members</p> <p>14 of the media.</p> <p>15 Q. Did anyone else have the authority to</p> <p>16 allow others outside of the media to attend the</p> <p>17 conferences?</p> <p>18 A. I'm not aware of anyone having that</p> <p>19 authority.</p> <p>20 Q. And who at the office of public affairs</p> <p>21 was in charge of determining who could attend the</p> <p>22 conferences?</p> | <p>1 Social Security number, your date of birth, your full</p> <p>2 name, and your media organization name to Frances</p> <p>3 Anderson, and she will then relay that information to</p> <p>4 the Secret Service, and they will do a quick</p> <p>5 background check on you, cursory, and then you will</p> <p>6 be put on a list and you will be admitted to the</p> <p>7 building.</p> <p>8 Q. And to your knowledge, was this the</p> <p>9 procedure in effect in October 2001?</p> <p>10 A. Yes, it was.</p> <p>11 Q. Did the Department of the Treasury have</p> <p>12 official written policies on who could and could not</p> <p>13 attend quarterly refunding press conferences?</p> <p>14 A. Not to my knowledge.</p> <p>15 Q. Directing your attention again to exhibit</p> <p>16 1, which was your recorded memorandum of interview</p> <p>17 Look at the bottom paragraph, the last</p> <p>18 paragraph.</p> <p>19 It says: Holahan said she did not know</p> <p>20 Peter Davis and only heard his name after the fact.</p> <p>21 She did not clear him into the press conference.</p> <p>22 Do you see that?</p>          |

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|---|---|
| <p>1 A. I do.</p> <p>2 Q. All right. What does it mean to say clear</p> <p>3 someone?</p> <p>4 A. To be cleared into the building.</p> <p>5 Q. And when you say, cleared, to be -- allow</p> <p>6 someone into the building?</p> <p>7 A. That Secret Service would have conducted a</p> <p>8 security clearance on that person and had put them on</p> <p>9 the list and admitted them into the building.</p> <p>10 Q. Now, as of October 31, 2001, at the time</p> <p>11 of that press conference, did you have the authority</p> <p>12 to clear persons into the building to attend</p> <p>13 conferences?</p> <p>14 A. I had the authority to send information to</p> <p>15 the U.S. Secret Service appointment desk for that</p> <p>16 background check to be done.</p> <p>17 Q. Okay. Did you personally clear anyone</p> <p>18 into that October 31st press conference?</p> <p>19 A. To the best of my recollection, no, I did</p> <p>20 not.</p> <p>21 Q. Do you know if there is a list,</p> <p>22 comprehensive list of everybody who attended the</p> | <p>1 assigned as part of the Treasury.</p> <p>2 Correct?</p> <p>3 MS. WILLIAMS: Objection.</p> <p>4 A. I don't recall.</p> <p>5 BY MR. THEODOROU:</p> <p>6 Q. Okay. Who -- you said that Secret Service</p> <p>7 would maintain -- if there was a list they would</p> <p>8 maintain the list of who was -- of the attendees of</p> <p>9 the conference; is that right?</p> <p>10 A. No.</p> <p>11 I said that they would have a list of who</p> <p>12 was cleared into that -- into the building that day,</p> <p>13 and you'd have to speak to them for additional</p> <p>14 details on that.</p> <p>15 Q. And where was this list maintained?</p> <p>16 MS. WILLIAMS: Objection.</p> <p>17 BY MR. THEODOROU:</p> <p>18 Q. Or do you know why this list was</p> <p>19 maintained?</p> <p>20 A. I don't.</p> <p>21 MS. WILLIAMS: Objection.</p> <p>22 BY MR. THEODOROU:</p>   |
| Page 111  | Page 113  |
| <p>1 October 31, 2001, conference?</p> <p>2 A. I don't have any direct knowledge of that,</p> <p>3 but it's a reasonable assumption that the U.S. Secret</p> <p>4 Service office at the Treasury Department has a</p> <p>5 listing of who was cleared in that day and at what</p> <p>6 times.</p> <p>7 Q. Okay. So the U.S. Secret Service at the</p> <p>8 Treasury Department?</p> <p>9 A. Correct.</p> <p>10 Q. Does the Secret Service have an office at</p> <p>11 the Treasury Department?</p> <p>12 It's actually based at the Treasury</p> <p>13 Department.</p> <p>14 Correct?</p> <p>15 A. Not any longer, no.</p> <p>16 Q. The Secret Service isn't in -- they kicked</p> <p>17 them out of that building a long time ago probably?</p> <p>18 A. They're with the Department of Homeland</p> <p>19 Security.</p> <p>20 Q. Oh, they moved them out to -- okay. All</p> <p>21 right.</p> <p>22 But at the time, Secret Service was</p>   | <p>1 Q. Was there a particular Secret Service</p> <p>2 agent who was assigned to these refunding</p> <p>3 conferences?</p> <p>4 A. Not to my knowledge.</p> <p>5 Q. Was there -- apart from the list of those</p> <p>6 who were cleared, was there a sign-in sheet for those</p> <p>7 who attended these conferences?</p> <p>8 A. Not on that day.</p> <p>9 Q. Not on that day?</p> <p>10 A. Nope.</p> <p>11 Q. Now, when there was a refunding</p> <p>12 conference, how do attendees get into the Treasury</p> <p>13 building on the morning of the conferences?</p> <p>14 A. They would approach the front door, enter,</p> <p>15 go to the desk where the Secret Service is sitting,</p> <p>16 present their photo ID, and receive a visitors badge</p> <p>17 if they're on the list and had previously been</p> <p>18 requested for clearance.</p> <p>19 Q. You're talking about having Treasury</p> <p>20 credentials.</p> <p>21 Could reporters with White House press</p> <p>22 credentials attend?</p> |

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|--|---|
| <p>1 A. I don't recall right now when the</p> <p>2 procedure changed, but there was a time when White</p> <p>3 House press credentials were enough to get into the</p> <p>4 Treasury building, but at some point that did change</p> <p>5 and we had to reissue Treasury credentials to all</p> <p>6 White House reporters as well.</p> <p>7 Q. But as of October 31st, what was the</p> <p>8 policy?</p> <p>9 MS. WILLIAMS: Objection.</p> <p>10 A. I don't recall when that policy changed.</p> <p>11 BY MR. THEODOROU:</p> <p>12 Q. October 31, 2001, do you know what the</p> <p>13 policy was?</p> <p>14 A. No.</p> <p>15 Q. If someone was not a member of the press</p> <p>16 but wanted to attend the quarterly refunding</p> <p>17 conference, what was the procedure in order to gain</p> <p>18 access to the conference?</p> <p>19 A. There was not a procedure.</p> <p>20 Q. There was no procedure?</p> <p>21 A. The press conference was hosted by the</p> <p>22 office of public affairs. As a media advisory</p> | <p>1 MS. WILLIAMS: Okay. I'll --</p> <p>2 MR. THEODOROU: Please.</p> <p>3 MS. WILLIAMS: -- reserve my objection</p> <p>4 until you finish your question.</p> <p>5 MR. THEODOROU: Right.</p> <p>6 BY MR. THEODOROU:</p> <p>7 Q. So is it fair to say that someone did not</p> <p>8 follow proper procedures in allowing Mr. Davis to</p> <p>9 attend that conference that day?</p> <p>10 MS. WILLIAMS: Objection.</p> <p>11 A. If Mr. Davis was cleared into the building</p> <p>12 to attend the press conference by someone outside of</p> <p>13 the office of public affairs, then that would be a</p> <p>14 violation of what the office of public affairs was</p> <p>15 trying to do, hold a press conference for the media.</p> <p>16 BY MR. THEODOROU:</p> <p>17 Q. No.</p> <p>18 What room in the Treasury building was --</p> <p>19 before October 31st, do you know what rooms were used</p> <p>20 for the refunding conferences or what room was used?</p> <p>21 A. I don't have direct knowledge, no, of</p> <p>22 that.</p> |
| Page 115   | Page 117  |
| <p>1 indicates, that you need to go through the office of</p> <p>2 public affairs to gain access to that event.</p> <p>3 Q. You subsequently learned that Peter Davis</p> <p>4 attended this conference.</p> <p>5 Correct?</p> <p>6 A. I did learn that.</p> <p>7 Q. So obviously there was somebody at</p> <p>8 Treasury who did not follow the proper procedures in</p> <p>9 allowing Mr. Davis to attend the conference.</p> <p>10 MS. WILLIAMS: Objection.</p> <p>11 A. That's a reasonable assumption.</p> <p>12 BY MR. THEODOROU:</p> <p>13 Q. So is it fair to say that someone did not</p> <p>14 follow the proper procedures --</p> <p>15 MS. WILLIAMS: Objection.</p> <p>16 BY MR. THEODOROU:</p> <p>17 Q. -- when he they allowed Mr. --</p> <p>18 MR. THEODOROU: I haven't finished my</p> <p>19 question.</p> <p>20 MS. WILLIAMS: Sorry.</p> <p>21 I thought you had.</p> <p>22 MR. THEODOROU: I have not.</p>  | <p>1 Q. What room was used for the quarterly</p> <p>2 refunding press conference on October 31, 2001?</p> <p>3 A. The diplomatic reception room on the third</p> <p>4 floor.</p> <p>5 Q. Was there a reason why the diplomatic</p> <p>6 reception room was used as opposed to another room?</p> <p>7 A. Yes.</p> <p>8 Q. What was the reason?</p> <p>9 A. The reason was, it was the room where</p> <p>10 press conferences at that time were traditionally</p> <p>11 being held because of renovations to the building,</p> <p>12 and it was literally the only room that we had</p> <p>13 available.</p> <p>14 Q. It had nothing to do with the fact that</p> <p>15 Peter Fisher was delivering the remarks?</p> <p>16 A. No.</p> <p>17 Q. Nor did it have anything to do with the</p> <p>18 importance of the announcement?</p> <p>19 A. No.</p> <p>20 Q. Who selected the room?</p> <p>21 A. I did.</p> <p>22 Q. How large is that room?</p>  |

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| <p>1 A. I don't have an approximate foot-by-foot<br/>2 description --<br/>3 Q. Right.<br/>4 But approximately.<br/>5 A. -- but it would be approximately --<br/>6 theater-style seating would be approximately 40 or 50<br/>7 people.<br/>8 Q. And where is the podium located in the<br/>9 room?<br/>10 Or rather, is there a podium in the room?<br/>11 MS. WILLIAMS: Objection.<br/>12 A. Well, the podium can be placed in the<br/>13 room. It's not a permanent podium.<br/>14 BY MR. THEODOROU:<br/>15 Q. Was there a podium placed in the room that<br/>16 day?<br/>17 A. Yes, there was.<br/>18 Q. Where was it placed?<br/>19 A. At one end of the room.<br/>20 Q. How many sets of doors does the room have?<br/>21 A. 3 -- 4.<br/>22 Q. Where are they located?</p> | <p>1 AFTERNOON SESSION<br/>2 (1:03 p.m.)<br/>3<br/>4 Whereupon,<br/>5 ELIZABETH HOLAHAN SCHMUTZ,<br/>6 the witness testifying at the time of recess, having<br/>7 been previously duly sworn, was further examined and<br/>8 testified further as follows:<br/>9<br/>10 THE VIDEOGRAPHER: We're back on the<br/>11 record at 1:03:51 PM.<br/>12<br/>13 EXAMINATION BY COUNSEL FOR DEFENDANT (RESUMED)<br/>14 BY MR. THEODOROU:<br/>15 Q. All right. Ms. Holahan, I just handed you<br/>16 a blank piece of paper.<br/>17 Before we broke, I talked about it might<br/>18 be easier for you to draw out, and I understand these<br/>19 are not the specific dimensions of what the<br/>20 diplomatic reception room looked like, so I was<br/>21 wondering if you could draw it out, point it out to<br/>22 us -- if you could draw -- do you have a pen in front</p> |
| Page 119   | Page 121   |
| <p>1 A. Do you have a diagram of the room?<br/>2 Q. I'm going to ask you to draw one for me.<br/>3 I just want to get your sense of -- your<br/>4 testimony.<br/>5 A. Along one wall, there is a room -- a door<br/>6 in the, quote-unquote, backroom, middle of the room,<br/>7 and there's a door behind where the podium is on the<br/>8 left side and also on the right side.<br/>9 Q. Okay.<br/>10 MR. THEODOROU: Let's go off the record<br/>11 for a second.<br/>12 THE VIDEOGRAPHER: Off the record at<br/>13 12:23:26 PM.<br/>14 MR. THEODOROU: Take a 5-minute break.<br/>15 (Whereupon, at 12:23 p.m., the deposition<br/>16 in the above-entitled matter was recessed, to<br/>17 reconvene at 1:03 p.m., this same day.)<br/>18<br/>19<br/>20<br/>21<br/>22</p>    | <p>1 of you --<br/>2 A. (Gesturing.)<br/>3 Q. -- draw what the diplomatic reception room<br/>4 looked like.<br/>5 (Cellular telephone ringing.)<br/>6 THE WITNESS: Pardon me.<br/>7 MR. THEODOROU: Go off the -- no --<br/>8 BY MR. THEODOROU:<br/>9 Q. And if you could just label that as,<br/>10 diplomatic reception room, and we'll label that as an<br/>11 exhibit too after you're done.<br/>12 (Pause.)<br/>13 BY MR. THEODOROU:<br/>14 Q. Would you please locate -- you know, you<br/>15 testified about the doors and where the doors are<br/>16 located.<br/>17 Can you identify where the doors are<br/>18 leading into the room, and just label them with doors<br/>19 and numbers, door 1, door 2.<br/>20 A. (Complying.)<br/>21 Q. Now -- I'm sorry.<br/>22 Did you label those?</p>   |

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|--|--|
| <p>1 A. (Gesturing.)</p> <p>2 Q. Great.</p> <p>3 Now, is there -- do those doors lead to</p> <p>4 hallways?</p> <p>5 A. Some do, some do not.</p> <p>6 Q. And of the doors you noted on that</p> <p>7 diagram, which doors led to hallways?</p> <p>8 A. Door 1 and door 2 lead to what I would</p> <p>9 call the main hallway on the second floor.</p> <p>10 Q. And would you please label that as the</p> <p>11 main hallway.</p> <p>12 A. (Complying.)</p> <p>13 Q. Okay.</p> <p>14 A. And then --</p> <p>15 Q. Where does door 3 lead to?</p> <p>16 A. To a hallway that runs between the</p> <p>17 diplomatic reception room and the secretary's large</p> <p>18 conference room, which is down over here.</p> <p>19 There's actually a second door here, so</p> <p>20 I'm not going to -- it goes that way, though.</p> <p>21 Q. And that's called the secretary's large</p> <p>22 conference room?</p>                               | <p>1 A. Yeah.</p> <p>2 People were standing along the wall there.</p> <p>3 Q. All right. Now, before the press</p> <p>4 conference began on October 31, 2001, was there any</p> <p>5 Treasury employee guarding the doors to the rooms to</p> <p>6 close them or to prevent people from leaving?</p> <p>7 A. To the best of my recollection, I believe</p> <p>8 that a colleague of mine from the office of public</p> <p>9 affairs, Tera Bradshaw, was standing in the back of</p> <p>10 the room by door 1.</p> <p>11 Q. And do you know if Tera Bradshaw was</p> <p>12 charged with preventing people from leaving after the</p> <p>13 conference started, or was she just in the back of</p> <p>14 the room?</p> <p>15 A. To the best of my recollection, I believe</p> <p>16 I asked her to monitor the door. The implicit</p> <p>17 meaning is, don't -- you know, people should not</p> <p>18 leave once the conference has begun.</p> <p>19 Q. But do you recall telling her that --</p> <p>20 A. No --</p> <p>21 Q. -- that you --</p> <p>22 A. -- I don't recall that.</p> |
| Page 123   | Page 125   |
| <p>1 A. This room over here is, yes.</p> <p>2 Q. That's the word.</p> <p>3 Could you just put an arrow and put,</p> <p>4 secretary's large conference room, to show that it</p> <p>5 leads to the secretary's large conference room.</p> <p>6 A. (Complying.)</p> <p>7 Q. And then door 4?</p> <p>8 A. Back here -- it leads into the kitchen.</p> <p>9 Q. That goes into the kitchen?</p> <p>10 A. Yeah.</p> <p>11 Q. Now, on October 31, 2001, secretary Fisher</p> <p>12 entered through what door?</p> <p>13 A. Door 3.</p> <p>14 Q. All right. Where was the podium located?</p> <p>15 Between doors 3 and 4?</p> <p>16 A. Correct.</p> <p>17 Q. Now, the attendees to the conference would</p> <p>18 have entered through doors 1 and 2?</p> <p>19 A. Initially, and then later as we got closer</p> <p>20 to the beginning of the press conference, simply door</p> <p>21 1.</p> <p>22 Q. As you get closer, door 2 was closed?</p> | <p>1 Q. All right. So you don't recall telling</p> <p>2 her, your job is to make sure people don't get --</p> <p>3 make sure people get out?</p> <p>4 A. I don't recall telling her that, no.</p> <p>5 Q. Once someone was admitted to the</p> <p>6 conference and it started after 9 o'clock, there was</p> <p>7 not anything that prevented the attendee from --</p> <p>8 strike that.</p> <p>9 Once the conference started and a person</p> <p>10 had already gotten into the conference, there wasn't</p> <p>11 anything to prevent them from leaving the room once</p> <p>12 it started.</p> <p>13 Correct?</p> <p>14 A. Well, the doors were closed, and Tera was</p> <p>15 standing by the back door.</p> <p>16 Q. Right.</p> <p>17 But to your knowledge, you don't remember</p> <p>18 telling Tera or whether Tera was stopping them.</p> <p>19 They could just open the door and walk</p> <p>20 out.</p> <p>21 Right?</p> <p>22 MS. WILLIAMS: Objection.</p>   |

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|---|--|
| <p>1 A. It's a reasonable assumption to make that</p> <p>2 Tera would have not allowed them to leave once the</p> <p>3 press conference was under way and the information</p> <p>4 was being disseminated.</p> <p>5 Q. But do you recall charging her with the</p> <p>6 responsibility of doing that?</p> <p>7 A. Not specifically, no.</p> <p>8 Q. And do you know if she did that?</p> <p>9 A. I recall seeing her standing back by the</p> <p>10 door.</p> <p>11 Q. Right.</p> <p>12 But do you recall whether she prevented</p> <p>13 anyone from leaving once the conference started?</p> <p>14 A. I don't recall anyone trying to leave.</p> <p>15 Q. Okay. Were there any Treasury Department</p> <p>16 employees outside of the door to prevent someone from</p> <p>17 coming into the conference once it started?</p> <p>18 A. I don't recall.</p> <p>19 Q. Did any Treasury employee check the</p> <p>20 identity of the credentials of people who entered the</p> <p>21 room?</p> <p>22 A. No.</p> | <p>1 Q. Okay. And is that your recollection</p> <p>2 today?</p> <p>3 A. Yes.</p> <p>4 Q. All right. Is it that no one left the</p> <p>5 room, or you do not recall -- or you did not see</p> <p>6 anyone leave the room?</p> <p>7 MS. WILLIAMS: Objection.</p> <p>8 A. I did not see anyone leave the room.</p> <p>9 BY MR. THEODOROU:</p> <p>10 Q. Okay. So you really don't know whether</p> <p>11 someone left the room.</p> <p>12 You just did not see anybody leave the</p> <p>13 room?</p> <p>14 A. Correct.</p> <p>15 Q. Okay. Were there any procedures in place</p> <p>16 to prevent the attendees from leaving the conference</p> <p>17 before it was over?</p> <p>18 A. I believe I just answered that.</p> <p>19 Q. And what was your answer?</p> <p>20 A. I just asked me a series of questions</p> <p>21 about if there was someone there to block them, and</p> <p>22 answered those questions.</p> |
| Page 127  | Page 129   |
| <p>1 Q. Was there a guard to prevent someone from</p> <p>2 leaving the room other than --</p> <p>3 A. No.</p> <p>4 MS. WILLIAMS: Objection.</p> <p>5 A. No, not to my knowledge.</p> <p>6 BY MR. THEODOROU:</p> <p>7 Q. Do you know if there was any guard that</p> <p>8 was assigned to prevent someone from leaving before</p> <p>9 the conference was over?</p> <p>10 A. Not to my knowledge.</p> <p>11 Q. Now, directing your attention again to</p> <p>12 exhibit 1, which is your memorandum of interview --</p> <p>13 A. M-hm.</p> <p>14 Q. -- if you take a look at it.</p> <p>15 You said in there at the bottom of the</p> <p>16 first paragraph on the second page, and I quote: She</p> <p>17 said no one left the room prior to the conclusion of</p> <p>18 the conference at approximately 9:25 AM.</p> <p>19 Now, do you remember testifying about</p> <p>20 that -- I mean, telling them about that in your</p> <p>21 interview?</p> <p>22 A. Yes.</p>  | <p>1 Q. Now, you testified -- now, the room at the</p> <p>2 time when the conference was taking place, there were</p> <p>3 cameras in the room.</p> <p>4 Correct?</p> <p>5 A. Correct.</p> <p>6 Q. And there were also cameras and lights in</p> <p>7 the room?</p> <p>8 A. I recall cameras being in the room.</p> <p>9 Q. Again to your own knowledge, you did not</p> <p>10 see anybody leave the room?</p> <p>11 A. I did not see anyone leave the room.</p> <p>12 Q. Okay. But you do not know if someone left</p> <p>13 the room?</p> <p>14 MS. WILLIAMS: Objection.</p> <p>15 A. Correct.</p> <p>16 I did not see anyone leave the room.</p> <p>17 BY MR. THEODOROU:</p> <p>18 Q. The doors were not locked.</p> <p>19 Correct?</p> <p>20 A. Correct.</p> <p>21 Q. To your knowledge, has the Department of</p> <p>22 the Treasury used written confidentiality agreements?</p>                             |

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|---|--|
| <p>1 MS. WILLIAMS: Objection, vague.</p> <p>2 A. Regarding?</p> <p>3 BY MR. THEODOROU:</p> <p>4 Q. Well, do you know whether the Department</p> <p>5 of the Treasury has ever used written confidentiality</p> <p>6 agreements with persons attending refunding</p> <p>7 conferences?</p> <p>8 MS. WILLIAMS: Objection.</p> <p>9 A. I have no knowledge of such agreements.</p> <p>10 BY MR. THEODOROU:</p> <p>11 Q. Do you know of Treasury using</p> <p>12 confidentiality agreements in any context?</p> <p>13 A. I'm not aware of it.</p> <p>14 Q. Do you know whether Treasury had a</p> <p>15 practice of using nonwritten or oral confidentiality</p> <p>16 agreements with attendees to refunding conferences?</p> <p>17 A. Can you elaborate on that question?</p> <p>18 Q. Well, I'll be -- be more specific you</p> <p>19 mean?</p> <p>20 A. Correct.</p> <p>21 Q. Do you know whether Treasury -- whether</p> <p>22 anyone at Treasury ever had an agreement with someone</p> | <p>1 Correct?</p> <p>2 A. Correct, not consenting verbally or in a</p> <p>3 written manner.</p> <p>4 Q. Correct.</p> <p>5 Consenting in any way --</p> <p>6 A. I mean, it was --</p> <p>7 Q. -- verbally or written.</p> <p>8 A. It was a --</p> <p>9 (Talking at the same time.)</p> <p>10 MR. THEODOROU: I'm sorry.</p> <p>11 I'm interrupting the witness.</p> <p>12 MS. WILLIAMS: You are.</p> <p>13 A. By announcing an embargo to the media</p> <p>14 about the release of the news and no one raised their</p> <p>15 hand and objected, then that is an implicit agreement</p> <p>16 in my mind.</p> <p>17 BY MR. THEODOROU:</p> <p>18 Q. In your mind, but my question was a little</p> <p>19 different.</p> <p>20 Nobody either orally or in writing</p> <p>21 consented to this.</p> <p>22 A. Correct.</p> |
| Page 131  | Page 133   |
| <p>1 attending the refunding conference, an oral</p> <p>2 agreement, where someone at Treasury said, do you</p> <p>3 understand that the condition of you attending this</p> <p>4 conference is that you can't disclose the</p> <p>5 information, a one-on-one agreement?</p> <p>6 MS. WILLIAMS: Objection.</p> <p>7 A. You mean -- is that different from me</p> <p>8 announcing the embargo time?</p> <p>9 BY MR. THEODOROU:</p> <p>10 Q. Yeah.</p> <p>11 An actual agreement between someone at</p> <p>12 Treasury and some other person.</p> <p>13 MS. WILLIAMS: Objection.</p> <p>14 BY MR. THEODOROU:</p> <p>15 Q. As opposed to simply announcing an embargo</p> <p>16 time.</p> <p>17 MS. WILLIAMS: Objection.</p> <p>18 A. I'm not aware of such an agreement.</p> <p>19 BY MR. THEODOROU:</p> <p>20 Q. Okay. As you testified earlier, you</p> <p>21 weren't aware of anybody who attended the conferences</p> <p>22 consenting to the embargo.</p>                             | <p>1 MS. WILLIAMS: Objection.</p> <p>2 BY MR. THEODOROU:</p> <p>3 Q. Correct?</p> <p>4 A. Yes.</p> <p>5 Q. And to your knowledge, you do not know</p> <p>6 whether someone came into the room after you</p> <p>7 announced the embargo?</p> <p>8 MS. WILLIAMS: Objection.</p> <p>9 A. I'm reasonably certain they did not.</p> <p>10 BY MR. THEODOROU:</p> <p>11 Q. But I'm asking you, do you know, your own</p> <p>12 recollection?</p> <p>13 MS. WILLIAMS: Objection.</p> <p>14 She announced it a couple of times --</p> <p>15 MR. THEODOROU: No.</p> <p>16 I --</p> <p>17 MS. WILLIAMS: -- I think her testimony</p> <p>18 is.</p> <p>19 MR. THEODOROU: You can object all you</p> <p>20 want.</p> <p>21 MS. WILLIAMS: Right.</p> <p>22 I'm trying to clarify --</p>  |

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|--|--|
| <p>1 MR. THEODOROU: She's going to answer the</p> <p>2 question.</p> <p>3 BY MR. THEODOROU:</p> <p>4 Q. Which is, do you know whether someone</p> <p>5 entered into the room after it started.</p> <p>6 MS. WILLIAMS: Objection.</p> <p>7 A. I do not recall anyone entering the room</p> <p>8 after the press conference began.</p> <p>9 BY MR. THEODOROU:</p> <p>10 Q. Turning to your memorandum of interview</p> <p>11 again on page 2 -- do you have that in front of you?</p> <p>12 A. I do.</p> <p>13 Q. All right. You said you did not know</p> <p>14 Peter Davis -- and this is second page -- Holahan</p> <p>15 said she did not know Peter Davis and only heard his</p> <p>16 name after the fact. She said she did not clear him</p> <p>17 into the press conference.</p> <p>18 Correct?</p> <p>19 A. Correct.</p> <p>20 Q. All right. When did you first learn about</p> <p>21 who Peter Davis was?</p> <p>22 A. When did I first hear his name?</p> | <p>1 A. In the course of a conversation about the</p> <p>2 information from the news conference being</p> <p>3 disseminated before the 10 AM embargo, I relayed to</p> <p>4 him what I had heard about a consultant being at the</p> <p>5 press conference, a nonmedia person.</p> <p>6 And he said that he knew of a consultant</p> <p>7 that had come into the building to attend the news</p> <p>8 conference.</p> <p>9 Q. Did he say anything else?</p> <p>10 A. Yes.</p> <p>11 Q. What did he say?</p> <p>12 A. He told me that -- I believe I asked him,</p> <p>13 how would this person have gotten in, and he told me</p> <p>14 that his secretary had cleared this person in.</p> <p>15 Q. And who was his secretary?</p> <p>16 A. I don't know her full name, but I believe</p> <p>17 her first name is Rosemary.</p> <p>18 Q. Have you ever heard the name Lula Tyler?</p> <p>19 A. No.</p> <p>20 Q. Did you say anything in response to</p> <p>21 Mr. Malvey?</p> <p>22 A. I don't recall what I said.</p> |
| Page 135   | Page 137   |
| <p>1 What is your question?</p> <p>2 Q. Yeah.</p> <p>3 When did you first hear his name?</p> <p>4 A. I first heard his name from Paul Malvey</p> <p>5 the morning of the 31st.</p> <p>6 Q. And did you have a conversation with</p> <p>7 Mr. Malvey?</p> <p>8 A. I did.</p> <p>9 Q. Where?</p> <p>10 A. In the office of public affairs section --</p> <p>11 there's an open section of the office by where the</p> <p>12 administrative assistants sit.</p> <p>13 Q. Was anybody else present?</p> <p>14 A. There were others in the room.</p> <p>15 Q. Who else was in the room?</p> <p>16 A. Frances Anderson.</p> <p>17 Q. Anyone else?</p> <p>18 A. Not that I recall.</p> <p>19 There were others present, you know, but</p> <p>20 not participating in a conversation or couldn't even</p> <p>21 hear it. It was a one-on-one conversation.</p> <p>22 Q. What did Mr. Malvey say?</p>   | <p>1 Q. Was Davis's attendance -- and did he</p> <p>2 mention who the person was, what his name was?</p> <p>3 A. He did. That's the first time I heard his</p> <p>4 name.</p> <p>5 Q. First time you heard the name Peter Davis?</p> <p>6 A. Correct.</p> <p>7 Q. Was Mr. Davis's attendance at that</p> <p>8 quarterly refunding press conference consistent with</p> <p>9 your understanding of the Treasury policies?</p> <p>10 A. No.</p> <p>11 Q. And so how did it violate Treasury</p> <p>12 policies?</p> <p>13 MS. WILLIAMS: Objection.</p> <p>14 A. The news conference was being hosted by</p> <p>15 the office of public affairs for the media, and this</p> <p>16 was a person who was not a member of media attending</p> <p>17 the press conference.</p> <p>18 BY MR. THEODOROU:</p> <p>19 Q. Did you ever hear about Mr. Davis getting</p> <p>20 kicked out of prior Treasury press conferences after</p> <p>21 October 31st?</p> <p>22 MS. WILLIAMS: Objection.</p>                                   |

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|---|--|
| <p style="text-align: right;">Page 138</p> <p>1 BY MR. THEODOROU:</p> <p>2 Q. Ever hear of it after October 31st, that</p> <p>3 he had been kicked out of press conferences in the</p> <p>4 past?</p> <p>5 A. No.</p> <p>6 I'm unaware of that.</p> <p>7 Q. Did anyone tell you -- did you ever learn</p> <p>8 that -- are you aware of someone named Jon Murchison?</p> <p>9 A. No.</p> <p>10 Q. And I think I asked you this.</p> <p>11 Lula Tyler, do you know her?</p> <p>12 A. I'm not familiar with that name.</p> <p>13 Q. Do you know if this woman -- strike that.</p> <p>14 You're not familiar with that and you</p> <p>15 don't know whether she had any authority to allow</p> <p>16 people into the building?</p> <p>17 MS. WILLIAMS: Objection.</p> <p>18 A. I don't know who she is.</p> <p>19 BY MR. THEODOROU:</p> <p>20 Q. Okay. How about someone named Elnora</p> <p>21 Bowser?</p> <p>22 A. I don't know who that is.</p>   | <p style="text-align: right;">Page 140</p> <p>1 A. There were 3 assistant secretaries who</p> <p>2 reported to him. Under the assistant secretaries,</p> <p>3 there were deputy assistant secretaries.</p> <p>4 THE COURT REPORTER: You have to slow</p> <p>5 down.</p> <p>6 A. Under the deputy assistant secretaries,</p> <p>7 there were directors. He was a director.</p> <p>8 BY MR. THEODOROU:</p> <p>9 Q. Did Mr. Malvey have the authority to clear</p> <p>10 persons into the press conferences in October 31st,</p> <p>11 2001?</p> <p>12 MS. WILLIAMS: Objection.</p> <p>13 A. In my opinion, he did not.</p> <p>14 BY MR. THEODOROU:</p> <p>15 Q. Do you know who Jill Ousley is?</p> <p>16 A. I do not.</p> <p>17 Q. Or was?</p> <p>18 Do you know who Roger Anderson is?</p> <p>19 A. Yes.</p> <p>20 Q. Who was Roger Anderson?</p> <p>21 A. He was -- I think he was -- I can't recall</p> <p>22 his title, but he worked within the office of</p>                                      |
| <p style="text-align: right;">Page 139</p> <p>1 Q. What was Mr. Malvey's position at the time</p> <p>2 when he had that conversation with you on the 31st?</p> <p>3 A. I don't recall his exact title, but he was</p> <p>4 in -- he worked within the office of domestic</p> <p>5 finance, and he reported to the assistant secretary</p> <p>6 for financial markets, Brian Roseboro.</p> <p>7 And Paul Malvey, who has since retired,</p> <p>8 was a career Treasury employee. He was not a</p> <p>9 political appointee.</p> <p>10 Q. Was the office of domestic finance the</p> <p>11 same as the office of market finance?</p> <p>12 A. No.</p> <p>13 Q. Okay. Are there differences between the</p> <p>14 2?</p> <p>15 A. The office of domestic finance is like the</p> <p>16 umbrella office.</p> <p>17 And as I went through earlier, the</p> <p>18 hierarchy was, undersecretary Fisher was the</p> <p>19 undersecretary for domestic finance.</p> <p>20 THE COURT REPORTER: You've got to slow</p> <p>21 down.</p> <p>22 (Discussion off the record.)</p> | <p style="text-align: right;">Page 141</p> <p>1 domestic finance as well and he was.</p> <p>2 Q. I'm sorry?</p> <p>3 A. He was the deputy assistant secretary, I</p> <p>4 believe.</p> <p>5 Q. Deputy assistant secretary for federal</p> <p>6 finance?</p> <p>7 A. That sounds right.</p> <p>8 A lot of titles.</p> <p>9 Q. Did you ever learn after October 31st</p> <p>10 about an agreement between Mr. Anderson and Mr. Davis</p> <p>11 concerning the confidentiality of what was said at a</p> <p>12 refunding conference?</p> <p>13 A. No.</p> <p>14 Q. Do you know of any confidentiality</p> <p>15 agreement reached between Pete Davis and any employee</p> <p>16 or representative of the Treasury Department?</p> <p>17 A. I'm not aware of any, no.</p> <p>18 Q. Have you heard about any such agreement?</p> <p>19 A. No.</p> <p>20 Q. If an agreement -- if such agreement</p> <p>21 existed, would the office of public affairs have been</p> <p>22 notified about the agreement?</p> |

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| Page 142  | Page 144  |
|---|---|
| <p>1 MS. WILLIAMS: Objection.</p> <p>2 A. That's an opinion I don't have. I can't</p> <p>3 give you a sense of that.</p> <p>4 BY MR. THEODOROU:</p> <p>5 Q. If there was an agreement -- I understand</p> <p>6 that.</p> <p>7 And I'm just asking -- I'm not trying to</p> <p>8 trick you into anything by asking these questions.</p> <p>9 I'm just trying to find out what happened.</p> <p>10 If there was an agreement between Peter</p> <p>11 Davis and Mr. Anderson, in other words, oral or</p> <p>12 written, where it was a confidentiality agreement</p> <p>13 that you, Mr. Davis -- we'll allow you to attend the</p> <p>14 refunding conferences, but you can't disclose what's</p> <p>15 said there, would it have been the practice of</p> <p>16 somebody in Mr. Anderson's office or Mr. Malvey's</p> <p>17 office to inform public affairs of such an agreement?</p> <p>18 MS. WILLIAMS: Objection.</p> <p>19 A. I'm not aware of any such agreement.</p> <p>20 Hypothetically if one -- if someone in the</p> <p>21 building was giving information to people, nonmedia</p> <p>22 people to attend a public affairs event then, yes, in</p> | <p>1 announced.</p> <p>2 Do you see that?</p> <p>3 A. I do.</p> <p>4 Q. All right. Again, what planning went into</p> <p>5 the release of the information on the 30-year bond</p> <p>6 that day?</p> <p>7 What kind of planning was done?</p> <p>8 MS. WILLIAMS: Objection.</p> <p>9 A. Are you asking -- well, can you please</p> <p>10 restate the question with more specifics.</p> <p>11 BY MR. THEODOROU:</p> <p>12 Q. All right. In terms of setting up the</p> <p>13 press conference -- okay? -- who was in charge of</p> <p>14 that?</p> <p>15 A. I was.</p> <p>16 Q. All right. Were there any other offices</p> <p>17 involved at Treasury?</p> <p>18 A. The office of domestic finance.</p> <p>19 Q. And who in the office of domestic finance</p> <p>20 was working with you to set up the press conference?</p> <p>21 A. They weren't working with me to set up the</p> <p>22 press conference.</p>   |
| Page 143  | Page 145  |
| <p>1 my opinion, we should have been informed.</p> <p>2 BY MR. THEODOROU:</p> <p>3 Q. And if someone had allowed someone who was</p> <p>4 not a member of the media to attend the refunding</p> <p>5 conference, you would have wanted to have known about</p> <p>6 that.</p> <p>7 Correct?</p> <p>8 A. Yes.</p> <p>9 MS. WILLIAMS: Objection.</p> <p>10 BY MR. THEODOROU:</p> <p>11 Q. In this case, you were never told about</p> <p>12 Mr. Davis attending the conference.</p> <p>13 Correct?</p> <p>14 A. Correct.</p> <p>15 Q. All right. Now, going back to exhibit 1</p> <p>16 again.</p> <p>17 This is -- let me just find where -- if</p> <p>18 you turn to page 1 there, Ms. Holahan.</p> <p>19 It says at the bottom of page 1: Holahan</p> <p>20 said as part of her official duties she helped</p> <p>21 coordinate the October 31, 2001, press conference</p> <p>22 where a suspension of the sale of 30-year bond was</p>  | <p>1 They were aware of what the office of</p> <p>2 public affairs was doing regarding setting up the</p> <p>3 press conference.</p> <p>4 Q. And what do you do when you set up a press</p> <p>5 conference?</p> <p>6 What do you have to do?</p> <p>7 A. Make a decision about the time and the</p> <p>8 location, draft a media advisory.</p> <p>9 Q. Which is the document we looked at --</p> <p>10 A. Correct.</p> <p>11 Q. -- earlier today?</p> <p>12 Right?</p> <p>13 A. Disseminate that media advisory to the</p> <p>14 media so that they know an event is taking place that</p> <p>15 they are invited to come and cover. There's a</p> <p>16 statement that is drafted for the official to give at</p> <p>17 the press conference. There's planning regarding,</p> <p>18 you know, the statement being formatted, when it's to</p> <p>19 be released, things of that nature.</p> <p>20 Q. Who drafts the statement for the official</p> <p>21 to read at the press conference?</p> <p>22 A. Mr. Fisher's statements were generally</p> |

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| Page 146  | Page 148   |
|---|--|
| <p>1 drafted by Mr. Fisher and his aides.</p> <p>2 Q. Did you have any input?</p> <p>3 A. I did not.</p> <p>4 Q. And the statement that he reads is the</p> <p>5 same as the statement that goes out over the Web once</p> <p>6 the conference is over?</p> <p>7 A. Generally speaking, yes.</p> <p>8 Q. And was that the case on October 31st?</p> <p>9 A. Yes.</p> <p>10 Q. So he reads verbatim a particular</p> <p>11 statement?</p> <p>12 A. Yes.</p> <p>13 Q. And then does he take questions?</p> <p>14 A. Yes, he does.</p> <p>15 Q. All right. On that day, what happened?</p> <p>16 Would you describe for me what happened.</p> <p>17 The conference you said began at 9 AM?</p> <p>18 A. I announced to the media present there</p> <p>19 would be an embargo upon the information announced</p> <p>20 until 10 AM. Undersecretary Fisher stood at the</p> <p>21 podium, read his statement.</p> <p>22 Q. And when did he come into the</p> | <p>1 (Holahan Exhibit No. 5</p> <p>2 was marked for</p> <p>3 identification.)</p> <p>4 BY MR. THEODOROU:</p> <p>5 Q. I'm sorry.</p> <p>6 So he came in?</p> <p>7 A. Through door 3.</p> <p>8 Q. Correct.</p> <p>9 A. Right there.</p> <p>10 Q. You made your announcement?</p> <p>11 A. Made my announcement.</p> <p>12 He made -- he read his statement.</p> <p>13 According to the memorandum of activity, I</p> <p>14 reiterated the embargo time before the</p> <p>15 question-and-answer period began.</p> <p>16 Question-and-answer period ensued.</p> <p>17 And once there were no more questions,</p> <p>18 Mr. Fisher thanked the media for coming, and I for</p> <p>19 the third time reiterated the embargo time until 10</p> <p>20 AM.</p> <p>21 Q. Now, when you say, for the third time --</p> <p>22 MS. WILLIAMS: Objection.</p>  |
| Page 147  | Page 149   |
| <p>1 conference?</p> <p>2 A. At approximately 9:05.</p> <p>3 Q. What door did he enter into on the</p> <p>4 exhibit?</p> <p>5 A. Door 3.</p> <p>6 Q. And that exhibit would have been --</p> <p>7 MR. THEODOROU: What number would that</p> <p>8 exhibit be?</p> <p>9 THE COURT REPORTER: It will be 5.</p> <p>10 MR. THEODOROU: We'll mark that as an</p> <p>11 exhibit.</p> <p>12 BY MR. THEODOROU:</p> <p>13 Q. All right. Exhibit 5.</p> <p>14 You would have come in through what door?</p> <p>15 MR. ROSSETTI: You want to mark it?</p> <p>16 MS. WILLIAMS: She has to put the sticker</p> <p>17 on.</p> <p>18 MR. THEODOROU: She's going to mark it as</p> <p>19 exhibit 3.</p> <p>20 MR. ROSSETTI: 5.</p> <p>21 MR. THEODOROU: 5.</p> <p>22 Excuse me.</p>  | <p>1 BY MR. THEODOROU:</p> <p>2 Q. -- is that your actual recollection today,</p> <p>3 or are you reading off that memorandum of interview?</p> <p>4 A. As I said earlier, what I recall today is</p> <p>5 that I gave the embargo time at the beginning and at</p> <p>6 the conclusion of the press conference.</p> <p>7 Q. Do you remember --</p> <p>8 A. As I sit here today, I recall doing it</p> <p>9 twice.</p> <p>10 Q. Correct. All right.</p> <p>11 Now, as you sit here today, you recall</p> <p>12 doing it twice, and that does not independently</p> <p>13 refresh your recollection whether you did it a third</p> <p>14 time?</p> <p>15 A. Does not.</p> <p>16 Q. Now, you hadn't been involved in planning</p> <p>17 any other quarterly refunding conference before the</p> <p>18 October 31st one.</p> <p>19 Correct?</p> <p>20 A. Correct.</p> <p>21 Q. Now, do you know that there was a</p> <p>22 quarterly refunding conference on October 1st, 2001,</p> |

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|---|--|
| <p>1 before you started -- excuse me -- on August 1st,<br/>2 2001?</p> <p>3 A. I'm not aware of it.</p> <p>4 Q. So you don't know who coordinated that?</p> <p>5 A. My understanding was that Tony Fratto was<br/>6 the person handling domestic finance before I started<br/>7 on August the 6th, so it is also my understanding<br/>8 that he handled that particular press conference.</p> <p>9 Q. Now, this particular quarterly refunding<br/>10 conference was different than the others in that<br/>11 usually they used a different room than the<br/>12 diplomatic reception room; isn't that right?</p> <p>13 MS. WILLIAMS: Objection.</p> <p>14 A. I have no knowledge of where --</p> <p>15 BY MR. THEODOROU:</p> <p>16 Q. Did you know they used different rooms in<br/>17 the past?</p> <p>18 A. No.</p> <p>19 MS. WILLIAMS: Objection.</p> <p>20 BY MR. THEODOROU:</p> <p>21 Q. Did you also know that -- well, you<br/>22 testified to this earlier, that they did not preset</p> | <p>1 (Mr. McGivern left the room.)</p> <p>2 A. If you're referring to undersecretary<br/>3 Fisher's statement, his statement was sent to me<br/>4 electronically from members of his staff, and then I<br/>5 passed it along to our administrative assistant,<br/>6 Frances Anderson, to have her format it.</p> <p>7 BY MR. THEODOROU:</p> <p>8 Q. And do you know who provided the office of<br/>9 public affairs with the statement to be released?</p> <p>10 A. It came from -- I believe it came from<br/>11 officials in the office of financial markets.</p> <p>12 Q. Okay. Do you know who at the office of<br/>13 financial markets sent it to your office?</p> <p>14 A. I believe it was Tim Bitsberger.</p> <p>15 Q. And who was he?</p> <p>16 A. At the time he was the deputy assistant<br/>17 secretary for financial markets, but that title might<br/>18 not be a hundred percent accurate.</p> <p>19 He was deputy assistant secretary for<br/>20 something, but it was -- it was -- he reported to<br/>21 assistant secretary for financial markets, Brian<br/>22 Roseboro, which is, R-O-S-E-B-O-R-O.</p> |
| Page 151  | Page 153   |
| <p>1 the embargo time in the past.</p> <p>2 Correct?</p> <p>3 MS. WILLIAMS: Objection.</p> <p>4 A. That's my understanding.</p> <p>5 BY MR. THEODOROU:</p> <p>6 Q. Do you know whether the embargo period in<br/>7 this case was longer than usual?</p> <p>8 A. Do I know now?</p> <p>9 Yes.</p> <p>10 Q. And did you know at the time?</p> <p>11 A. At the time we didn't know what the<br/>12 embargo time would be, the length of time to the end<br/>13 of the event and 10 o'clock, we did not know at the<br/>14 time.</p> <p>15 Q. What's the procedure -- or what was the<br/>16 procedure at the time in October 2001 for creating<br/>17 press releases for quarterly refunding press<br/>18 conferences, for creating the actual press release?</p> <p>19 A. Can you be more specific with your<br/>20 question?</p> <p>21 Q. How was the press release created on<br/>22 October -- for October 31, 2001?</p>   | <p>1 Q. Did the office of public affairs edit the<br/>2 statement that came to it?</p> <p>3 A. No.</p> <p>4 Q. Does anyone review the document before it<br/>5 is distributed to the press?</p> <p>6 MS. WILLIAMS: Objection.</p> <p>7 BY MR. THEODOROU:</p> <p>8 Q. Or did anyone review the document before<br/>9 it was distributed to the press that day?</p> <p>10 MS. WILLIAMS: Objection.</p> <p>11 A. Can you be more specific?</p> <p>12 Did anyone review the file that was sent<br/>13 to me at 8:30 in the morning?</p> <p>14 BY MR. THEODOROU:</p> <p>15 Q. Yes.</p> <p>16 A. No.</p> <p>17 It was written and finalized by the office<br/>18 of domestic finance, substance of what he was going<br/>19 to say.</p> <p>20 Q. So the substance before it goes on to the<br/>21 Treasury Web site, it was not edited to your<br/>22 knowledge?</p>   |

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|---|---|
| <p>1 A. The text itself was not edited.</p> <p>2 MS. WILLIAMS: Objection.</p> <p>3 BY MR. THEODOROU:</p> <p>4 Q. And who was responsible for approving the</p> <p>5 final product that goes onto the Web site?</p> <p>6 A. In this situation, I was.</p> <p>7 Q. Do you recall when the office of public</p> <p>8 affairs received a copy of the statement to be</p> <p>9 released?</p> <p>10 A. 8:39 AM.</p> <p>11 Q. And why are you — how are you so specific</p> <p>12 about the time?</p> <p>13 A. Because I've reviewed the email.</p> <p>14 Q. You reviewed it yesterday?</p> <p>15 A. It was my email.</p> <p>16 (Holahan Exhibit No. 6</p> <p>17 was marked for</p> <p>18 identification.)</p> <p>19 BY MR. THEODOROU:</p> <p>20 Q. Now, I'm showing you what's been marked as</p> <p>21 exhibit 6.</p> <p>22 Have you seen this before, Ms. Holahan?</p>                                | <p>1 A. As I just said, he was the deputy</p> <p>2 assistant secretary in the office of financial</p> <p>3 markets.</p> <p>4 Q. And the subject of his message,</p> <p>5 Mr. Bitsberger to Mr. Fisher, to you, Mr. Malvey, and</p> <p>6 Jared Gross, the subject is final version.</p> <p>7 Correct?</p> <p>8 A. Yes, that's correct.</p> <p>9 Q. All right. Now, it contained an</p> <p>10 attachment in Microsoft Word format, doesn't it?</p> <p>11 A. It appears to be, yes.</p> <p>12 Q. And it looks like it was a 4-page document</p> <p>13 containing undersecretary Fisher's remarks for the</p> <p>14 upcoming press conference?</p> <p>15 A. Correct.</p> <p>16 Q. And do you remember this was the</p> <p>17 attachment to this email?</p> <p>18 A. I do.</p> <p>19 Q. Now, the document name in small type at</p> <p>20 the bottom of the email message reads: NOVQ, dash,</p> <p>21 final, dot, doc.</p> <p>22 Do you see that?</p> |
| Page 155  | Page 157  |
| <p>1 A. Yes, I have.</p> <p>2 Q. Okay. What is it?</p> <p>3 A. It's an email that I received from Tim</p> <p>4 Bitsberger at 8:39 AM and then forwarded it on to</p> <p>5 Frances Anderson at 8:41 AM.</p> <p>6 Q. Okay. And this particular document was</p> <p>7 printed from your computer at Treasury.</p> <p>8 Correct?</p> <p>9 A. That's correct.</p> <p>10 Q. All right. And the message at the top as</p> <p>11 you say is from you to Frances Anderson at 8:41?</p> <p>12 A. That's correct.</p> <p>13 Q. And the message below is from Tim</p> <p>14 Bitsberger to Peter Fisher, you, Paul Malvey, and</p> <p>15 Jared Gross.</p> <p>16 Correct?</p> <p>17 A. That's correct.</p> <p>18 Q. Who is Jared Gross?</p> <p>19 A. Jared Gross at the time was the senior</p> <p>20 adviser to Peter Fisher.</p> <p>21 Q. Okay. What was Mr. Bitsberger's position</p> <p>22 at the time?</p> | <p>1 A. I do.</p> <p>2 Q. Now, "NOVQ" refers to what?</p> <p>3 A. I don't know.</p> <p>4 Q. Could it refer to the November quarterly</p> <p>5 refunding announcement?</p> <p>6 MS. WILLIAMS: Objection.</p> <p>7 A. It's possible. You'd have to ask the</p> <p>8 person who named it.</p> <p>9 BY MR. THEODOROU:</p> <p>10 Q. All right. And "final" refers to the</p> <p>11 final version of this announcement?</p> <p>12 A. Like I said, you'd have to ask the person</p> <p>13 who named it. I did not —</p> <p>14 Q. Are you saying you don't know what that</p> <p>15 means, final?</p> <p>16 A. Do I understand what final means?</p> <p>17 (Talking at the same time.)</p> <p>18 BY MR. THEODOROU:</p> <p>19 Q. Yeah.</p> <p>20 THE COURT REPORTER: Okay. Wait.</p> <p>21 (Discussion off the record.)</p> <p>22 MS. WILLIAMS: Objection.</p>   |

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|---|---|
| <p>1 (Discussion off the record.)</p> <p>2 BY MR. THEODOROU.</p> <p>3 Q. And "final" refers to the final version of</p> <p>4 the announcement?</p> <p>5 MS. WILLIAMS: Objection.</p> <p>6 A. As I just stated, I did not name the</p> <p>7 document. I cannot tell you what that means. But</p> <p>8 it's a reasonable assumption to believe that it is a</p> <p>9 final version of the document.</p> <p>10 BY MR. THEODOROU:</p> <p>11 Q. And it's a reasonable assumption to</p> <p>12 believe "NOVQ" refers to November quarterly refunding</p> <p>13 announcement?</p> <p>14 MS. WILLIAMS: Objection.</p> <p>15 A. That's not my reasonable assumption.</p> <p>16 That's yours.</p> <p>17 BY MR. THEODOROU:</p> <p>18 Q. What does "NOVQ" stand for?</p> <p>19 A. I don't know.</p> <p>20 MS. WILLIAMS: Objection.</p> <p>21 A. I did not name the document.</p> <p>22 MS. WILLIAMS: Objection.</p> | <p>1 Q. Did she report to you?</p> <p>2 A. No, she did not.</p> <p>3 Q. Did she report to Mr. Fratto?</p> <p>4 A. Yes, she did.</p> <p>5 Q. And did you give Ms. Anderson --</p> <p>6 work -- (indiscernible) --</p> <p>7 A. On occasion, I did.</p> <p>8 Q. Was Mr. Bitsberger's email to you at 8:39</p> <p>9 the first time you saw Mr. Fisher's statement?</p> <p>10 A. It was.</p> <p>11 Q. Did you review this statement?</p> <p>12 A. I don't recall reading through it word for</p> <p>13 word. It's a reasonable assumption that I opened it,</p> <p>14 looked at it briefly, and then closed it.</p> <p>15 Q. All right. When you met with the SEC the</p> <p>16 last couple times, did they show you this document?</p> <p>17 A. Yes, they did.</p> <p>18 Q. All right. Mr. Fisher's statement does</p> <p>19 not contain any information about an embargo or</p> <p>20 release time, does it?</p> <p>21 A. No, it does not.</p> <p>22 Q. Was it the job of the office of public</p>                                       |
| Page 159  | Page 161  |
| <p>1 THE COURT REPORTER: You guys need to give</p> <p>2 me a shot at it here.</p> <p>3 MS. WILLIAMS: I need a chance to object</p> <p>4 before you answer the question. That's what</p> <p>5 happened.</p> <p>6 BY MR. THEODOROU:</p> <p>7 Q. But you recall receiving and sending the</p> <p>8 emails.</p> <p>9 Correct?</p> <p>10 A. Correct.</p> <p>11 Q. All right. Now, Frances Anderson, she was</p> <p>12 the public information coordinator at the time?</p> <p>13 A. I am not sure of her title. She was</p> <p>14 essentially the secretary, the administrative</p> <p>15 assistant.</p> <p>16 Q. She worked in the office of public</p> <p>17 affairs?</p> <p>18 A. She did.</p> <p>19 Q. All right. Did she have a higher- or</p> <p>20 lower-ranking position than you in the office of</p> <p>21 public affairs?</p> <p>22 A. Lower.</p>  | <p>1 affairs at the time to add the appropriate</p> <p>2 information about embargo release time?</p> <p>3 A. Yes.</p> <p>4 That was standard procedure, to add the</p> <p>5 information about the release time and the name and</p> <p>6 the phone number of the contact person.</p> <p>7 Q. And who was responsible for adding this</p> <p>8 information with the office of public affairs?</p> <p>9 A. At the time, it was standard procedure for</p> <p>10 Frances Anderson to format the document with the</p> <p>11 letterhead, with the release time, and with the</p> <p>12 contact information.</p> <p>13 Q. Did anyone have the responsibility of</p> <p>14 telling Frances Anderson about an embargo?</p> <p>15 A. It was my responsibility to inform her</p> <p>16 about the embargo.</p> <p>17 Q. Besides the embargo time and adding, you</p> <p>18 say -- letterhead?</p> <p>19 Correct?</p> <p>20 A. Yes.</p> <p>21 Q. What kind of letterhead was to be added to</p> <p>22 this document, Mr. Fisher's statement?</p> |

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|--|---|
| <p>1 A. A letterhead indicating that it was coming</p> <p>2 from the Department of the Treasury office of public</p> <p>3 affairs.</p> <p>4 Q. Besides adding the letterhead and adding</p> <p>5 embargo, did Ms. Anderson have to do anything with</p> <p>6 the formatting of this document?</p> <p>7 A. That was formatting it.</p> <p>8 Q. How about spellchecking?</p> <p>9 A. No.</p> <p>10 Q. Did anyone at the office of public affairs</p> <p>11 have the responsibility of making any substantive</p> <p>12 edits?</p> <p>13 A. No.</p> <p>14 Q. Now, you sent Ms. Anderson an email at</p> <p>15 8:41 AM with the document.</p> <p>16 Correct?</p> <p>17 A. Correct.</p> <p>18 Q. You said, please format and email a</p> <p>19 formatted copy back to me.</p> <p>20 Correct?</p> <p>21 A. Correct.</p> <p>22 Q. All right. What exactly did you want</p>  | <p>1 Q. Do you know if anyone told Ms. Anderson</p> <p>2 about the embargo time for the October 31st</p> <p>3 conference?</p> <p>4 A. I can only speak for myself.</p> <p>5 Q. My question -- so your answer is, you</p> <p>6 don't know of anyone else who spoke to her about it?</p> <p>7 A. No, I do not.</p> <p>8 MR. THEODOROU: Let's go to the next</p> <p>9 document.</p> <p>10 (Holahan Exhibit No. 7</p> <p>11 was marked for</p> <p>12 identification.)</p> <p>13 BY MR. THEODOROU:</p> <p>14 Q. I'm now showing you, Ms. Holahan, what's</p> <p>15 been marked as exhibit 7.</p> <p>16 Do you see that document?</p> <p>17 A. I do.</p> <p>18 Q. Have you seen it before today?</p> <p>19 A. I have.</p> <p>20 Q. All right. When was the last time you saw</p> <p>21 it?</p> <p>22 A. I believe yesterday.</p>  |
| Page 163   | Page 165  |
| <p>1 Ms. Anderson to do?</p> <p>2 A. I wanted her to take this text that I had</p> <p>3 received from Mr. Bitsberger and format it</p> <p>4 electronically so there was a letterhead, a release</p> <p>5 time, and my name and phone call as the contact.</p> <p>6 Q. Had you ever asked Ms. Anderson to format</p> <p>7 a document like this before?</p> <p>8 A. Yes.</p> <p>9 Q. Your particular email does not mention the</p> <p>10 embargo time, though, does it?</p> <p>11 A. Correct.</p> <p>12 Q. Did you orally inform her about the</p> <p>13 embargo time?</p> <p>14 A. It was my understanding that she was aware</p> <p>15 of the event that we were having that morning, that</p> <p>16 there was an embargo.</p> <p>17 Q. My question is, did you orally inform her.</p> <p>18 A. That morning, I did not.</p> <p>19 Q. Prior to that morning, did you inform her</p> <p>20 of the embargo time?</p> <p>21 A. I do not recall specifically informing her</p> <p>22 of the embargo time.</p> | <p>1 Q. And this is another email printed out from</p> <p>2 your computer at Treasury?</p> <p>3 A. That's correct.</p> <p>4 Q. And the message at the top was from Tony</p> <p>5 Fratto to you and other people -- 7 other people --</p> <p>6 at 8:53 AM on October 31, 2001?</p> <p>7 A. M-hm, that's correct.</p> <p>8 Q. All right. And the message below that was</p> <p>9 a message from you to a number of other people?</p> <p>10 A. Correct.</p> <p>11 Q. On October 31, 2001, at 8:46.</p> <p>12 Correct?</p> <p>13 A. M-hm, correct.</p> <p>14 Q. And the message below that was a message</p> <p>15 from Timothy Bitsberger to Peter Fisher, you, Paul</p> <p>16 Malvey, and Jared Gross at 8:39 --</p> <p>17 A. Correct.</p> <p>18 Q. -- AM?</p> <p>19 And that's a message we've already</p> <p>20 discussed.</p> <p>21 Correct?</p> <p>22 A. Yes.</p> |

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|--|--|
| <p>1 Q. All right. Directing your attention to</p> <p>2 your message at 8:46 AM to a group of people, who --</p> <p>3 you mention here Robert Nichols.</p> <p>4 Who is Robert Nichols?</p> <p>5 A. The deputy assistant secretary for public</p> <p>6 affairs.</p> <p>7 Q. You also sent this to J.T. Young.</p> <p>8 Do you see that?</p> <p>9 A. I do.</p> <p>10 Q. Who was J.T. Young?</p> <p>11 A. He was in the office of legislative</p> <p>12 affairs.</p> <p>13 Q. You also sent it to someone named Amy</p> <p>14 Best.</p> <p>15 Who is Amy Best?</p> <p>16 A. In the office of legislative affairs.</p> <p>17 Q. You also sent it to someone named Tim</p> <p>18 Dulaney?</p> <p>19 A. Dulaney.</p> <p>20 Q. Do you know who that was?</p> <p>21 A. I believe he was in the office of</p> <p>22 legislative affairs.</p>  | <p>1 committee chairs for the committees that oversee</p> <p>2 Treasury and things of that nature.</p> <p>3 Q. And what committees would those have been?</p> <p>4 A. I believe the finance committee, anyone</p> <p>5 who has to do with financial issues, but I'd have to</p> <p>6 refer you to the office of legislative affairs. They</p> <p>7 can tell you who they would send information to on a</p> <p>8 regular basis.</p> <p>9 Q. And how about Mr. Malvey?</p> <p>10 Who were his key people?</p> <p>11 MS. WILLIAMS: Objection.</p> <p>12 A. You'd have to ask him.</p> <p>13 BY MR. THEODOROU:</p> <p>14 Q. Was there a reason why Treasury would send</p> <p>15 these key people the statement by email directly as</p> <p>16 opposed to having them hear the news like everyone</p> <p>17 else at a conference?</p> <p>18 A. When the conference would be over and the</p> <p>19 embargo was lifted at 10 AM. So it's public</p> <p>20 information as of 10 AM.</p> <p>21 MR. THEODOROU: I've just been informed we</p> <p>22 have to make a tape change, so we'll make the change.</p> |
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| <p>1 Q. Why did you forward Mr. Fisher's statement</p> <p>2 to these Treasury employees?</p> <p>3 A. Because they were in the office of</p> <p>4 legislative affairs, and they would be charged with</p> <p>5 informing congressional members of the announcement.</p> <p>6 Q. Okay. Now, in your message, you state to</p> <p>7 Paul Malvey, J.T. Young, and Tim Dulaney, please</p> <p>8 email to your key people at 10 AM today, not before.</p> <p>9 A. Correct.</p> <p>10 Q. Correct?</p> <p>11 And what do you mean by the phrase -- what</p> <p>12 did you mean by, key people?</p> <p>13 A. The people outside of the building that</p> <p>14 would need to be informed, that should be informed.</p> <p>15 Q. And who were these people?</p> <p>16 A. Well, J.T. and Tim were in the office of</p> <p>17 legislative affairs, so that means members of</p> <p>18 Congress.</p> <p>19 Q. Who would have been those members of</p> <p>20 Congress that they had to inform?</p> <p>21 A. I'm not going to speculate on who they</p> <p>22 would have informed, but it's reasonable to assume</p> | <p>1 THE VIDEOGRAPHER: This is the end of tape</p> <p>2 number 2 in the video deposition of Ms. Elizabeth</p> <p>3 Holahan. We're off the record at 1:49:24 PM on</p> <p>4 August 23rd, 2006.</p> <p>5 (Recess.)</p> <p>6 THE VIDEOGRAPHER: This is the beginning</p> <p>7 of tape 3 in the videotape deposition of</p> <p>8 Ms. Elizabeth Holahan. On the record at 1:55:20 PM</p> <p>9 on August 23rd, 2006.</p> <p>10 BY MR. THEODOROU:</p> <p>11 Q. Ms. Holahan, your message you wrote:</p> <p>12 Frances says she cannot format this into electronic</p> <p>13 file with Treasury letterhead, so send as is. Sorry.</p> <p>14 Do you see that?</p> <p>15 A. I do.</p> <p>16 Q. And you're referring to Frances Anderson</p> <p>17 there?</p> <p>18 A. I am.</p> <p>19 Q. And you had sent Mr. Fisher's statement to</p> <p>20 Ms. Anderson 5 minutes earlier at 8:41 AM?</p> <p>21 A. Correct.</p> <p>22 Q. Between the time that you had sent</p>   |

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| <p>1 Mr. Fisher's statement and when you sent this email,<br/>2 had you spoken with Ms. Anderson?<br/>3 A. I had.<br/>4 Q. You had?<br/>5 A. Yes.<br/>6 Q. What exactly did you say to her?<br/>7 A. She walked past my office door. I asked<br/>8 her if she had a chance to format it, because I<br/>9 needed it back.<br/>10 And she informed me verbally that she was<br/>11 having some sort of a problem with the letterhead and<br/>12 she couldn't do it.<br/>13 Q. What kind of problem with the letterhead?<br/>14 A. She didn't specify.<br/>15 Q. And at that time, did you tell her -- give<br/>16 her the embargo time?<br/>17 MS. WILLIAMS: Objection.<br/>18 A. No.<br/>19 BY MR. THEODOROU:<br/>20 Q. Now, take a look at Mr. Fratto's email<br/>21 above yours at 8:53 AM.<br/>22 Do you see it?</p>                              | <p>1 has a plus symbol added.<br/>2 Do you notice -- do you compare it --<br/>3 isn't that right?<br/>4 A. It appears to be.<br/>5 Q. In fact there's a difference.<br/>6 Now, did you look at the document at this<br/>7 time that Mr. Fratto attached to his email?<br/>8 A. Yes.<br/>9 Q. And did that particular document have the<br/>10 soft letterhead that you wanted?<br/>11 A. Yes.<br/>12 Q. And what is the soft letterhead again?<br/>13 A. It's an electronic graphic.<br/>14 Q. A graphic of what?<br/>15 A. The Treasury Department.<br/>16 Q. Why do they call it, soft letterhead?<br/>17 A. Because it's -- it's considered a hard<br/>18 copy on paper, and something that's soft is the<br/>19 opposite of hard.<br/>20 Q. What was on -- like on a computer?<br/>21 A. Yeah.<br/>22 Q. Okay.</p>            |
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| <p>1 A. I do.<br/>2 Q. And the context reads: Here is a copy<br/>3 with Treasury letterhead suitable for email or fax.<br/>4 Do you see that?<br/>5 A. I do.<br/>6 Q. Now, did Mr. Fratto attach a revised<br/>7 version of Mr. Fisher's statement to his email?<br/>8 A. It appears so.<br/>9 Q. Do you remember him doing that?<br/>10 A. I do.<br/>11 Q. In fact if you look at the document<br/>12 notation in his email.<br/>13 Do you see that?<br/>14 A. I do.<br/>15 Q. It says -- the document name in small type<br/>16 at the bottom of email message reads, NOVQ, dash --<br/>17 and then it says, final, in capital letters, capital<br/>18 F-I-N-A-L, plus dot, doc, D-O-C.<br/>19 Do you see that?<br/>20 A. I do.<br/>21 Q. All right. Now, that's the same document<br/>22 used by Mr. Bitsberger in his message, but this one</p> | <p>1 A. It's a graphic file.<br/>2 Q. That's what this is?<br/>3 MS. WILLIAMS: Just to clarify: When you<br/>4 said, this, were you referring to exhibit 4?<br/>5 MR. THEODOROU: Well, we were on the --<br/>6 THE WITNESS: Correct, yes.<br/>7 MR. THEODOROU: Yes.<br/>8 MS. WILLIAMS: She pointed to something.<br/>9 MR. THEODOROU: Yes.<br/>10 BY MR. THEODOROU:<br/>11 Q. You were referring to exhibit 4 and we<br/>12 were talking about, that was the exhibit --<br/>13 A. That's --<br/>14 Q. -- that was sent to Frances Anderson?<br/>15 A. That's the media advisory --<br/>16 Q. Okay. Excuse me.<br/>17 A. -- is the soft letterhead.<br/>18 Q. Okay.<br/>19 A. That just means that that is on the<br/>20 physical paper itself.<br/>21 Q. Okay. I'll show you the next exhibit that<br/>22 we'll have marked.</p> |

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|--|---|
| <p>1 MR. ROSSETTI: You should talk to your</p> <p>2 kids, Nick. They'll teach you computer language.</p> <p>3 MR. THEODOROU: "Soft letterhead" and</p> <p>4 "hard letterhead"?</p> <p>5 (Holahan Exhibit No. 8</p> <p>6 was marked for</p> <p>7 identification.)</p> <p>8 BY MR. THEODOROU:</p> <p>9 Q. Now, directing your attention to what's</p> <p>10 marked as exhibit 8.</p> <p>11 Do you see that document?</p> <p>12 A. I do.</p> <p>13 Q. And have you seen that before?</p> <p>14 A. Yes.</p> <p>15 Q. When was the last time you saw it?</p> <p>16 A. Yesterday.</p> <p>17 Q. Okay. And what is it?</p> <p>18 A. It is undersecretary Fisher's statement at</p> <p>19 the quarterly refunding press conference.</p> <p>20 Q. Now, is that the document that was</p> <p>21 attached to Mr. Fratto's message?</p> <p>22 A. I believe so, yes.</p>   | <p>1 this date done that.</p> <p>2 Q. And when you say, the particular file,</p> <p>3 what do you mean by that?</p> <p>4 A. The soft letterhead file.</p> <p>5 Q. So -- because you were a new employee at</p> <p>6 Treasury?</p> <p>7 A. Yes. Correct.</p> <p>8 Frances normally formatted all of the</p> <p>9 documents for us.</p> <p>10 Q. So you didn't have the capability of doing</p> <p>11 the soft letterhead?</p> <p>12 A. I didn't have -- I did not possess the</p> <p>13 soft letterhead at that time. I later formatted my</p> <p>14 own documents.</p> <p>15 Q. And the 10 AM embargo time was inserted by</p> <p>16 Mr. Fratto too.</p> <p>17 Correct?</p> <p>18 A. That's my understanding.</p> <p>19 Q. All right. Did you send this document to</p> <p>20 Ms. Anderson?</p> <p>21 A. I don't recall doing so.</p> <p>22 Q. Now, was it the normal procedure to hand</p>   |
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| <p>1 Q. And do you know how he created it?</p> <p>2 A. Yes.</p> <p>3 Q. What did he do?</p> <p>4 A. He opened up the graphic that had the</p> <p>5 picture of the Treasury Department and the words</p> <p>6 Department of the Treasury, office of public affairs,</p> <p>7 and he most likely cut-and-pasted the document there,</p> <p>8 or vice versa. There's different ways of doing it.</p> <p>9 I can't be sure how he did it that day.</p> <p>10 Q. Did he add anything else to the document?</p> <p>11 A. Yes, he did.</p> <p>12 Q. What did he add?</p> <p>13 A. He added the embargo time, the date, my</p> <p>14 name, and my phone number.</p> <p>15 Q. Now, could you have created this document</p> <p>16 yourself?</p> <p>17 A. I could have.</p> <p>18 Q. And this is the example, exhibit 8, of</p> <p>19 what they call the soft Treasury letterhead?</p> <p>20 A. I'd like to restate something.</p> <p>21 Actually on that date I don't believe I</p> <p>22 had this particular file, so, no, I could not have on</p> | <p>1 out copies of the quarterly refunding statement to</p> <p>2 attendees at the press conference?</p> <p>3 A. Yes, it was.</p> <p>4 Q. And when was this normally done?</p> <p>5 A. At the very beginning of the press</p> <p>6 conference.</p> <p>7 Q. So before the conference began?</p> <p>8 A. Yes.</p> <p>9 Q. Is that what happened on October 31st?</p> <p>10 A. Yes.</p> <p>11 Q. And what kind of letterhead was used for</p> <p>12 the copies of the statement that was distributed?</p> <p>13 A. It's my understanding Frances used the</p> <p>14 hard letterhead, exhibit 4.</p> <p>15 Q. Now, why is -- when it says, Treasury</p> <p>16 News, that's called hard letterhead?</p> <p>17 A. Yes, because it's on the physical paper.</p> <p>18 Q. As opposed to being placed on the paper?</p> <p>19 A. To create this document, she would print</p> <p>20 off this text from the words for immediate release</p> <p>21 down to this number. She would print that off on</p> <p>22 a -- on a piece of paper that had this letterhead</p> |

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| <p>1 along the top on it. It's blue.</p> <p>2 Q. Okay. Because we're in the -- doing a</p> <p>3 deposition, you want to refer to what exhibit, for</p> <p>4 instance, you referred to.</p> <p>5 Let me show you --</p> <p>6 A. I'm using exhibit 4 as an example.</p> <p>7 Q. All right. Let's take exhibit 4 as an</p> <p>8 example.</p> <p>9 Hold on.</p> <p>10 And exhibit 4 for the record is the</p> <p>11 Treasury Department's announcement of a quarterly</p> <p>12 refunding news conference sent out on October 31,</p> <p>13 2001.</p> <p>14 Correct?</p> <p>15 A. Correct.</p> <p>16 Q. All right. Now, why is this an example of</p> <p>17 hard as opposed to soft letterhead?</p> <p>18 A. As I stated earlier, hard letterhead is a</p> <p>19 piece of paper that comes in a box with other pieces</p> <p>20 of paper, and they all have a blue letterhead on</p> <p>21 them. It looks like this without the text.</p> <p>22 Q. So it looks like this exhibit 4?</p>   | <p>1 Q. So the hard letterhead with the Treasury</p> <p>2 seal is what was used and distributed at the</p> <p>3 conference.</p> <p>4 Correct?</p> <p>5 A. My understanding is that Frances formatted</p> <p>6 onto the hard letterhead and distributed it at the</p> <p>7 press conference.</p> <p>8 Q. And Frances was in charge of preparing the</p> <p>9 version of Mr. Fisher's statement that was going to</p> <p>10 be handed out to attendees at the press conference?</p> <p>11 A. Yes.</p> <p>12 Q. Okay. Now, did you review the version of</p> <p>13 Mr. Fisher's statement that she had prepared?</p> <p>14 A. I did not.</p> <p>15 Q. So you didn't stop by her desk that</p> <p>16 morning to talk --</p> <p>17 A. She was upstairs --</p> <p>18 Q. -- about what --</p> <p>19 A. -- with these in her possession, and she</p> <p>20 did not show them to me.</p> <p>21 Q. Did you see the stack -- you did not see</p> <p>22 the stack of press releases that she had prepared?</p>  |
| Page 179  | Page 181  |
| <p>1 A. Correct.</p> <p>2 Q. Without text?</p> <p>3 A. Correct.</p> <p>4 Q. And then on the hard letterhead document,</p> <p>5 Frances Anderson would put information into it?</p> <p>6 A. She would put the physical piece of paper</p> <p>7 into the printer, and she would then print out this</p> <p>8 text spaced so that it would come underneath the blue</p> <p>9 letterhead, and then she would make photocopies of</p> <p>10 it, which is why you now see it in black and white.</p> <p>11 Q. All right. As opposed to a soft</p> <p>12 letterhead where the computer would put the</p> <p>13 letterhead on it?</p> <p>14 A. It would be a graphic.</p> <p>15 Q. A graphic that a -- the computer would</p> <p>16 put --</p> <p>17 A. It's a graphic. It's a file that you have</p> <p>18 in your computer. There's no boxes of paper with</p> <p>19 that letterhead on it.</p> <p>20 It's simply a graphic, and that you insert</p> <p>21 it onto your text or you put your text onto the</p> <p>22 graphic, either way. And then you save it as a file.</p> | <p>1 A. They were with her in the crook of her arm</p> <p>2 physically. They were not available to review.</p> <p>3 Q. Did you review any of the documents?</p> <p>4 MS. WILLIAMS: Objection.</p> <p>5 A. What documents are you referring to?</p> <p>6 Q. That was she was going to distribute at</p> <p>7 the press preference.</p> <p>8 A. As I just said, she had the copies with</p> <p>9 her physically, and she did not show them to me for</p> <p>10 my review.</p> <p>11 Q. Did you ask to review?</p> <p>12 A. I did not.</p> <p>13 Q. Did you ever tell her that you approved</p> <p>14 her version of the press release?</p> <p>15 A. I did not. I did not have any</p> <p>16 conversation with Frances about what she formatted.</p> <p>17 Q. When you were -- when you met with the</p> <p>18 lawyers from the SEC and Treasury before this</p> <p>19 deposition today, did they tell you anything about</p> <p>20 Ms. Anderson's testimony in this case?</p> <p>21 A. No.</p> <p>22 Q. Did Ms. Anderson ever ask you whether she</p> |

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|--|---|
| <p>1 should hand out the press release before or after the</p> <p>2 press conference?</p> <p>3 A. She did not.</p> <p>4 Q. So you don't remember telling her that she</p> <p>5 should hand it out before the press conference began?</p> <p>6 A. I don't recall that conversation taking</p> <p>7 place.</p> <p>8 It's not unreasonable to think that it</p> <p>9 might have. Normal -- it was standard procedure for</p> <p>10 documents to be handed out at the start of a press</p> <p>11 conference.</p> <p>12 Q. Let me show you what's been marked as</p> <p>13 exhibit 9.</p> <p>14 (Holahan Exhibit No. 9</p> <p>15 was marked for</p> <p>16 identification.)</p> <p>17 BY MR. THEODOROU:</p> <p>18 Q. Before I get to exhibit 9, let me go back</p> <p>19 to exhibit 8.</p> <p>20 Do you have that in front of you?</p> <p>21 A. Yes.</p> <p>22 Q. That's what Mr. Fratto sent you.</p>                           | <p>1 Q. You don't remember seeing that document on</p> <p>2 Ms. Anderson's desk on the morning of October 31,</p> <p>3 2001?</p> <p>4 MS. WILLIAMS: Objection.</p> <p>5 A. As I just said, I sent her the form -- the</p> <p>6 file. She formatted onto a hard letterhead.</p> <p>7 I did not have a chance to review it. She</p> <p>8 had it with her physically. It was not on her desk.</p> <p>9 BY MR. THEODOROU:</p> <p>10 Q. Now, when you sent her the file, you're</p> <p>11 talking about the -- what was exhibit 6.</p> <p>12 Correct?</p> <p>13 A. Correct.</p> <p>14 Q. You say, please format an email?</p> <p>15 A. Correct.</p> <p>16 Q. So you did not look at that document after</p> <p>17 she did the formatting?</p> <p>18 A. I did not.</p> <p>19 Q. Why not?</p> <p>20 A. We were very busy.</p> <p>21 Q. Okay. And this is the version of</p> <p>22 Mr. Fisher's statement that was distributed to the</p>                                     |
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| <p>1 Correct?</p> <p>2 A. Correct.</p> <p>3 Q. All right. And did you ever give this --</p> <p>4 this version of Mr. Fisher's statement, what has been</p> <p>5 marked as exhibit 8, to Ms. Anderson?</p> <p>6 A. I don't recall giving this to her, no.</p> <p>7 Q. Okay. I'm showing you what has been</p> <p>8 marked as exhibit 9.</p> <p>9 Do you have that in front of you?</p> <p>10 A. I do.</p> <p>11 Q. And do you recognize it?</p> <p>12 A. I do.</p> <p>13 Q. What is it?</p> <p>14 A. It is a version of Mr. Fisher's statement</p> <p>15 for hard letterhead with "for immediate release" in</p> <p>16 the upper left-hand corner.</p> <p>17 Q. And it also says, for immediate release.</p> <p>18 Correct?</p> <p>19 A. That's what I just said, yes.</p> <p>20 Q. Now, did you review that document that</p> <p>21 morning on October 31, 2001?</p> <p>22 A. I did not review this version of it, no.</p> | <p>1 attendees at the press conference on the morning of</p> <p>2 October 31, 2001.</p> <p>3 Correct?</p> <p>4 A. Which exhibit?</p> <p>5 Q. Exhibit 9.</p> <p>6 A. That's my understanding, that this is what</p> <p>7 she handed out to the members of the press that were</p> <p>8 attending the press conference.</p> <p>9 Q. And it was handed out at the beginning of</p> <p>10 the conference.</p> <p>11 Correct?</p> <p>12 A. That's my -- yes, my recollection is, it</p> <p>13 was handed out at the beginning of the press</p> <p>14 conference.</p> <p>15 Q. And when did you learn that it was handed</p> <p>16 out to the attendees at the beginning of the</p> <p>17 conference?</p> <p>18 A. I watched her handing the document out at</p> <p>19 the press conference as I was making the announcement</p> <p>20 about the embargo.</p> <p>21 Q. And were you aware at the time you</p> <p>22 addressed the press that the -- or the attendees at</p> |

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|---|--|
| <p>1 the press conference that the attendees had received</p> <p>2 a press release that stated, for immediate release?</p> <p>3 A. I was not aware of that.</p> <p>4 MS. WILLIAMS: Objection.</p> <p>5 BY MR. THEODOROU:</p> <p>6 Q. So you were not aware that exhibit 9 was</p> <p>7 distributed to the attendees at the press conference?</p> <p>8 MS. WILLIAMS: Objection.</p> <p>9 A. I was aware that Frances Anderson was</p> <p>10 handing out Peter Fisher's statement.</p> <p>11 I was not aware what she was handing out</p> <p>12 said, for immediate release.</p> <p>13 Q. I just want to rephrase my question for</p> <p>14 Ms. Williams.</p> <p>15 You were not aware that she was handing</p> <p>16 out Mr. Fisher's statement that said, for immediate</p> <p>17 release.</p> <p>18 Correct?</p> <p>19 A. That's correct.</p> <p>20 I was not aware that Mr. Fisher's</p> <p>21 statement said, for immediate release, on it.</p> <p>22 Q. Do you know why Ms. Anderson included the</p>   | <p>1 A. I do not have a recollection of telling</p> <p>2 her specifically it was a 10 AM embargo on the 31st.</p> <p>3 Q. Now, did Treasury have policies and</p> <p>4 procedures in October 2001 for providing embargoed</p> <p>5 information directly to the press by means other than</p> <p>6 press conferences?</p> <p>7 A. Can you restate the question, please.</p> <p>8 Q. Well, actually let me rephrase that.</p> <p>9 When you testified earlier today about</p> <p>10 contacting -- about contacting The New York Times,</p> <p>11 the Wall Street Journal, and other what you call</p> <p>12 financial media outlets.</p> <p>13 Correct?</p> <p>14 A. Correct.</p> <p>15 Q. All right. Was there any policy or</p> <p>16 procedure at Treasury for providing embargoed</p> <p>17 information directly to those media outlets where</p> <p>18 their reporters do not attend the press conferences?</p> <p>19 A. There's no policy in place regarding that.</p> <p>20 Q. Now, on October 31st, you provided this</p> <p>21 embargoed information directly to several major media</p> <p>22 outlets.</p> |
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| <p>1 caption, for immediate release, in this version</p> <p>2 containing Mr. Fisher's statement?</p> <p>3 A. That is a question for Ms. Anderson.</p> <p>4 Q. Do you know if anyone at Treasury ever</p> <p>5 told Ms. Anderson about the 10 AM embargo time?</p> <p>6 MS. WILLIAMS: Objection.</p> <p>7 A. I don't have any direct knowledge of</p> <p>8 someone telling Frances of the embargo time, no.</p> <p>9 BY MR. THEODOROU:</p> <p>10 Q. Did anybody in the office of public</p> <p>11 affairs have the responsibility to tell Ms. Anderson</p> <p>12 about the embargo time?</p> <p>13 A. It's my responsibility to coordinate with</p> <p>14 Frances regarding the press event on October 31st.</p> <p>15 Based on those conversations, it was my understanding</p> <p>16 that she knew it was a 10 AM embargo.</p> <p>17 Q. Well, how do you know she knew about it?</p> <p>18 A. I don't know what she knew. I'm telling</p> <p>19 you what I know.</p> <p>20 Q. But based on your conversations, you did</p> <p>21 not tell her about the embargo time.</p> <p>22 Correct?</p> | <p>1 Correct?</p> <p>2 A. Correct.</p> <p>3 Q. One of them was CNBC?</p> <p>4 A. Correct.</p> <p>5 Q. The New York Times was another?</p> <p>6 A. Correct.</p> <p>7 Q. Wall Street Journal was another?</p> <p>8 A. Correct.</p> <p>9 Q. The Associated Press was another?</p> <p>10 A. M-hm.</p> <p>11 Q. Correct?</p> <p>12 A. Correct.</p> <p>13 Q. And Bloomberg was another.</p> <p>14 A. Correct.</p> <p>15 Q. All right.</p> <p>16 MR. THEODOROU: I'd like to get all of</p> <p>17 these marked.</p> <p>18 MR. ROSSETTI: Would it be easier to</p> <p>19 staple them together and make them one exhibit?</p> <p>20 MR. THEODOROU: I've got them stapled,</p> <p>21 John.</p> <p>22 Hold on.</p>   |

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|--|---|
| <p>1 I've got them. Let's make this as the</p> <p>2 next exhibit, exhibit 10.</p> <p>3 (Holahan Exhibit No. 10</p> <p>4 was marked for</p> <p>5 identification.)</p> <p>6 BY MR. THEODOROU:</p> <p>7 Q. All right.</p> <p>8 Do you see exhibit 10, Ms. Holahan?</p> <p>9 A. Yeah.</p> <p>10 Q. This is a series of emails that you sent.</p> <p>11 Correct?</p> <p>12 A. Correct.</p> <p>13 Q. And there's an email to Chip Akin at CNBC</p> <p>14 at 8:57 AM on October 31st?</p> <p>15 A. Correct.</p> <p>16 Q. There's also an email to Jonathan --</p> <p>17 A. -- Fuerbringer.</p> <p>18 Q. -- Fuerbringer, F-U-E-R-B-R-I-N-G-E-R, at</p> <p>19 The New York Times on October 31 at 9:30 AM.</p> <p>20 Correct?</p> <p>21 A. Correct.</p> <p>22 Q. There's also an email from you to Greg Ip</p>  | <p>1 Q. Whose handwriting is that?</p> <p>2 A. It's mine.</p> <p>3 Q. Okay. And did you -- did you write "CNBC"</p> <p>4 and "New York Times" and identify these for a reason?</p> <p>5 A. Yes.</p> <p>6 Q. What was the reason?</p> <p>7 A. I was asked by the attorneys back in</p> <p>8 November of 2001 to produce emails pertaining to this</p> <p>9 particular day, the situation, so I was identifying</p> <p>10 the person to whom I was sending the documents.</p> <p>11 Q. And who were the attorneys who asked for</p> <p>12 this?</p> <p>13 A. I don't recall their names.</p> <p>14 Q. And do you recall sending those emails in</p> <p>15 the morning of October 31st?</p> <p>16 A. I do.</p> <p>17 Q. Okay. Who is Chip Akins --</p> <p>18 A. Chip --</p> <p>19 Q. -- Akin?</p> <p>20 A. -- Akin is a producer for CNBC, which is a</p> <p>21 business cable network.</p> <p>22 Q. And had you dealt with him before October</p> |
| Page 191   | Page 193  |
| <p>1 at the Wall Street Journal at 9:32 AM on October</p> <p>2 31st?</p> <p>3 A. Correct.</p> <p>4 Q. And finally, there's an email to Robert</p> <p>5 Nichols. It says, DAS -- I'm not sure I know what</p> <p>6 that is.</p> <p>7 A. Deputy assistant secretary.</p> <p>8 Q. -- of public affairs.</p> <p>9 The person you testified about earlier?</p> <p>10 A. Correct.</p> <p>11 Q. All right. So you sent him at 9:54?</p> <p>12 MR. ROSSETTI: You got to come to more of</p> <p>13 these depositions.</p> <p>14 MR. THEODOROU: For Robert Nichols --</p> <p>15 MR. ROSSETTI: You'd know the acronyms.</p> <p>16 MR. THEODOROU: Believe me, I come to</p> <p>17 enough. I know what an embargo is.</p> <p>18 (Discussion off the record.)</p> <p>19 BY MR. THEODOROU:</p> <p>20 Q. Do you recognize the handwriting on these</p> <p>21 pages?</p> <p>22 A. I do.</p> | <p>1 31st?</p> <p>2 A. Yes.</p> <p>3 Q. In what context?</p> <p>4 A. He was a producer for CNBC, and they</p> <p>5 covered the Treasury Department.</p> <p>6 Q. Did you attach any documents to the</p> <p>7 emails?</p> <p>8 A. Yes, I did.</p> <p>9 Q. All right. Do you remember what document</p> <p>10 you attached to the email?</p> <p>11 A. The document that Tony Fratto sent me,</p> <p>12 which was the formatted version with the embargo time</p> <p>13 on it of Peter Fisher's statement at the quarterly</p> <p>14 refunding press conference.</p> <p>15 Q. All right. The document that was attached</p> <p>16 to Tony Fratto's email message from 8:53 AM?</p> <p>17 A. That's correct.</p> <p>18 Q. And that was the version on soft</p> <p>19 letterhead?</p> <p>20 MR. THEODOROU: See, John, I got "soft</p> <p>21 letterhead" down.</p> <p>22 Okay?</p>  |

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|--|---|
| <p>1 MR. ROSSETTI: You're getting better.</p> <p>2 Your kids would be proud.</p> <p>3 BY MR. THEODOROU:</p> <p>4 Q. Now, Mr. -- in this case, Mr. Akin</p> <p>5 received this before the attendees of the press</p> <p>6 conference received any statement.</p> <p>7 Correct?</p> <p>8 A. That's correct.</p> <p>9 Q. Did Treasury policies on embargoes</p> <p>10 authorize you to provide more than an hour's notice</p> <p>11 to certain media outlets?</p> <p>12 A. There was not a policy in place. It's up</p> <p>13 to my discretion.</p> <p>14 Q. So to your knowledge, there was no limits</p> <p>15 on how much advance notice Treasury could provide?</p> <p>16 A. Correct.</p> <p>17 Q. Did Treasury give Mr. Fratto a statement</p> <p>18 or Mr. -- excuse me -- Mr. Fisher's statement in</p> <p>19 whatever form it was formatted to any other media</p> <p>20 outlets before 9 AM to your knowledge?</p> <p>21 A. No.</p> <p>22 Q. And why did CNBC get it before 9 AM?</p>              | <p>1 with anyone else at CNBC?</p> <p>2 A. No.</p> <p>3 Q. Now, under the Treasury embargo policy,</p> <p>4 was Akin free to share that information with other</p> <p>5 people?</p> <p>6 A. He was free to share it with the reporter</p> <p>7 who was going to be conducting the interview.</p> <p>8 Q. Was he free share it with other colleagues</p> <p>9 at CNBC besides the reporter conducting the</p> <p>10 interview?</p> <p>11 A. As I recall, the conversation I had with</p> <p>12 Chip was that he was going share it with the</p> <p>13 reporter, and that was it.</p> <p>14 Q. Okay. When did you speak to Chip?</p> <p>15 A. That morning.</p> <p>16 Q. About what time?</p> <p>17 A. I don't recall.</p> <p>18 Q. Did you talk to him in person or by phone?</p> <p>19 A. By phone.</p> <p>20 Q. Was anybody else on the line?</p> <p>21 A. No.</p> <p>22 Q. Okay. What was the substance of the</p>  |
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| <p>1 A. Because there was to be a CNBC interview</p> <p>2 with undersecretary Fisher prior -- post-press</p> <p>3 conference but prior to 10 AM, and I wanted --</p> <p>4 because I was going to physically be at the press</p> <p>5 conference I knew to give them the statement</p> <p>6 beforehand to allow them time to read it, to digest</p> <p>7 it, and formulate their questions so that the</p> <p>8 interview would be a reasonable interview with</p> <p>9 substantial questions.</p> <p>10 Q. Now, the subject line on this email says,</p> <p>11 embargoed until 10 AM.</p> <p>12 Do you see that?</p> <p>13 A. I do.</p> <p>14 Q. How did you know that Chip Akin understood</p> <p>15 what that meant?</p> <p>16 A. Because he's a member of the media.</p> <p>17 Q. Did you tell him what it meant?</p> <p>18 A. I did not.</p> <p>19 Q. Had you ever discussed Treasury's embargo</p> <p>20 policy with him?</p> <p>21 A. No.</p> <p>22 Q. Did you ever discuss the embargo policy</p> | <p>1 conversation?</p> <p>2 A. Setting up the interview between the</p> <p>3 reporter in question and Mr. Fisher.</p> <p>4 And as you can see in the email here, it</p> <p>5 says, again, the number is, and that's the number for</p> <p>6 Peter's office, and that's Peter's secretary, Anna</p> <p>7 Hart. So I'm reiterating the instructions that I</p> <p>8 gave him over the phone, which is to call and leave</p> <p>9 the reporter's name and phone number with Anna and</p> <p>10 that Peter would call this reporter back as soon as</p> <p>11 the press conference was concluded.</p> <p>12 Q. Okay. But let me go back to my question.</p> <p>13 What did you say to him and what did he</p> <p>14 say to you?</p> <p>15 A. I just told you.</p> <p>16 Q. All right. Well, I'd like to get some</p> <p>17 clarification because I misunderstood it, so I'd like</p> <p>18 to -- what did you say to him in your telephone</p> <p>19 conversation?</p> <p>20 A. I don't recall word for word what we said.</p> <p>21 Q. What was the substance of the</p> <p>22 conversation?</p> |

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|---|--|
| <p>1 A. Was that Treasury had made an announcement<br/>2 that CNBC would be interested in and that we were<br/>3 going to have a press conference and that he would<br/>4 want to interview Peter afterwards, I could get him<br/>5 the information before the press conference with the<br/>6 understanding that it was embargoed until 10 AM, it<br/>7 would help the reporter prepare for the interview<br/>8 post-press conference.<br/>9 And he agreed to that embargo.<br/>10 Q. He agreed to the embargo, but I don't hear<br/>11 you saying that it was only restricted him talking to<br/>12 the reporter.<br/>13 Do you remember saying that to him, or you<br/>14 don't have a recollection?<br/>15 A. I remember speaking to him and saying that<br/>16 the embargo was at 10 AM and that he could give the<br/>17 information to his reporter.<br/>18 I do not recall saying he could not give<br/>19 it to anyone else, if that's what you're asking.<br/>20 Q. That's what I was going to ask.<br/>21 A. Okay.<br/>22 Q. So you don't know whether you provided it</p> | <p>1 A. If the embargo was broken and they were<br/>2 the only ones breaking the embargo, then it would<br/>3 have been a real serious problem.<br/>4 Q. Now, the text of your mail says: Again,<br/>5 the number is 202-622-1703, leave reporter's name and<br/>6 number with Anna Hart.<br/>7 Do you see that?<br/>8 A. I do.<br/>9 Q. And Anna Hart was Mr. Fisher's<br/>10 administrative assistant?<br/>11 A. Correct.<br/>12 Q. CNBC usually have a reporter cover<br/>13 quarterly refunding conferences?<br/>14 A. You'd have to ask CNBC.<br/>15 Q. All right. Let's turn to the next email.<br/>16 Jonathan Fuerbringer.<br/>17 Do you see that?<br/>18 A. I do.<br/>19 Q. Why did you send him an email at 9:30 AM<br/>20 that day?<br/>21 A. The press conference was concluded. The<br/>22 information had been given to the press.</p> |
| Page 199  | Page 201   |
| <p>1 to anybody else at CNBC, such as anchors or any other<br/>2 people?<br/>3 A. I don't have any knowledge of that.<br/>4 Q. Okay. Do you know when CNBC first<br/>5 reported Treasury's decision to suspend the 30-year<br/>6 bond?<br/>7 A. I do not.<br/>8 Q. Did you ever check?<br/>9 A. If I did, I don't recall.<br/>10 Q. What would have happened if CNBC had<br/>11 reported before 10 AM?<br/>12 A. If -- in your hypothetical situation,<br/>13 would this leak have occurred?<br/>14 MS. WILLIAMS: Objection.<br/>15 BY MR. THEODOROU:<br/>16 Q. What would have happened if they had<br/>17 reported it before 10 AM?<br/>18 A. It depends on the scenario.<br/>19 MS. WILLIAMS: Objection.<br/>20 BY MR. THEODOROU:<br/>21 Q. Well, what do you mean, depends on the<br/>22 scenario?</p>  | <p>1 Jonathan Fuerbringer works out of The New<br/>2 York Times office in New York City, so he could not<br/>3 have physically been at the press conference. So I<br/>4 sent it to him by email.<br/>5 Q. Well, it could have been the press<br/>6 conference he flew down for.<br/>7 Correct?<br/>8 MS. WILLIAMS: Objection.<br/>9 A. I'm not going to speculate.<br/>10 BY MR. THEODOROU:<br/>11 Q. Well, you're speculating when you said he<br/>12 couldn't have been there.<br/>13 Right?<br/>14 MS. WILLIAMS: Objection.<br/>15 A. He was not present.<br/>16 BY MR. THEODOROU:<br/>17 Q. All right. Now, you attached the same<br/>18 version of Fisher's statement that Tony Fratto had<br/>19 sent you on this one too, on your email to --<br/>20 A. Yes.<br/>21 Q. -- Mr. Fuerber --<br/>22 A. Fuerbringer.</p>                           |

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|--|---|
| <p>1 Q. Fuerbringer.</p> <p>2 Did The New York Times -- The New York</p> <p>3 Times did not have a reporter at the press conference</p> <p>4 that day?</p> <p>5 A. I don't know.</p> <p>6 Q. Did the Times usually have a reporter at</p> <p>7 the quarterly refunding press conferences?</p> <p>8 A. I don't know.</p> <p>9 Q. Now, did you discuss the embargo policy</p> <p>10 with Mr. Fuerbringer?</p> <p>11 A. In the subject line, it says, embargoed</p> <p>12 until 10 AM today, and the document itself is --</p> <p>13 indicates that it's embargoed until 10 AM.</p> <p>14 Q. But as is in the case of CNBC, did you</p> <p>15 have an oral discussion with him about embargo and</p> <p>16 what it meant?</p> <p>17 A. I did not.</p> <p>18 Q. Did you have any discussion with anybody</p> <p>19 at The New York Times about embargo and what it</p> <p>20 meant?</p> <p>21 A. No, I did not.</p> <p>22 MS. WILLIAMS: Objection.</p> | <p>1 bond?</p> <p>2 A. I don't have an exact recollection, but</p> <p>3 the reasonable assumption is the next day. They</p> <p>4 publish on a daily basis.</p> <p>5 Q. Turning to the next document in this batch</p> <p>6 in this exhibit, it's your email to Greg Ip.</p> <p>7 Correct?</p> <p>8 A. Correct.</p> <p>9 Q. And who is Greg Ip?</p> <p>10 A. Greg Ip is a reporter at the Washington</p> <p>11 Journal.</p> <p>12 Q. And why did you send him this email at</p> <p>13 9:32 AM?</p> <p>14 A. For the same reason I sent it to Jonathan</p> <p>15 Fuerbringer.</p> <p>16 Q. And again that was -- you sent him the</p> <p>17 same version of Mr. Fisher's statement that Tony</p> <p>18 Fratto had sent you at 8:53?</p> <p>19 A. Correct.</p> <p>20 But to clarify, Greg Ip does work out of</p> <p>21 the Washington D.C. bureau. He simply was not able</p> <p>22 to attend. But he's a reporter that covers the</p>  |
| Page 203   | Page 205  |
| <p>1 BY MR. THEODOROU:</p> <p>2 Q. Do you recall having a discussion with</p> <p>3 anybody about The New York Times about the embargo?</p> <p>4 A. No, I do not.</p> <p>5 Q. From what computer did you send this</p> <p>6 email?</p> <p>7 A. My own.</p> <p>8 Q. And how far away was that computer from</p> <p>9 the diplomatic reception room?</p> <p>10 A. It was on the floor beneath the diplomatic</p> <p>11 reception room.</p> <p>12 Q. Okay. And do you remember when you left</p> <p>13 the diplomatic reception room on October 31st,</p> <p>14 approximately?</p> <p>15 A. Approximately 9:28.</p> <p>16 Q. So it doesn't take that long to get to</p> <p>17 your office?</p> <p>18 A. It doesn't.</p> <p>19 MS. WILLIAMS: Objection.</p> <p>20 BY MR. THEODOROU:</p> <p>21 Q. Do you know when The New York Times first</p> <p>22 reported the Treasury decision to suspend the 30-year</p>  | <p>1 Treasury Department, covers domestic finance very</p> <p>2 closely.</p> <p>3 Q. Did you discuss the embargo policy with</p> <p>4 Mr. Ip?</p> <p>5 A. How so?</p> <p>6 Q. Did you have an oral -- besides sending</p> <p>7 him the email, do you remember talking to him that</p> <p>8 day?</p> <p>9 A. No.</p> <p>10 Q. The next -- Robert Nichols --</p> <p>11 Do you remember sending Mr. Fisher's</p> <p>12 statement to any other media outlet before 10 AM on</p> <p>13 October 31st other than the ones you just testified</p> <p>14 about?</p> <p>15 A. I do not recall sending it to anyone else.</p> <p>16 Q. Do you know if anyone at Treasury sent out</p> <p>17 Mr. Fisher's statement to any other media outlets?</p> <p>18 A. I don't have any knowledge of that.</p> <p>19 Q. Other than your testimony about your</p> <p>20 telephone conversation with the producer at CNBC, did</p> <p>21 you have -- did you speak by telephone with any other</p> <p>22 reporters or media officials before 10 AM on October</p> |

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|---|---|
| <p>1 31st about Mr. Fisher's statement?</p> <p>2 A. Yes.</p> <p>3 Q. Who?</p> <p>4 A. I spoke to several wire reporters in the</p> <p>5 Treasury pressroom.</p> <p>6 Q. And who were they?</p> <p>7 A. I don't recall exactly who they were.</p> <p>8 Q. From what organizations?</p> <p>9 A. I believe it was Reuters and Dow Jones. I</p> <p>10 believe it was Jonathan Nicholson from Reuters and</p> <p>11 Deborah Lagamarsino from Dow Jones, but I can't be a</p> <p>12 hundred percent certain.</p> <p>13 Q. And where was Mr. Nicholson when you spoke</p> <p>14 to him?</p> <p>15 A. My recollection is that they were on the</p> <p>16 third floor in the hallway outside of the diplomatic</p> <p>17 reception room.</p> <p>18 Q. And you spoke to them when?</p> <p>19 Before or after the press conference?</p> <p>20 A. After.</p> <p>21 Q. Direct -- turning first -- did you</p> <p>22 discuss -- were you talking to them both at the same</p> | <p>1 Q. Until about what time?</p> <p>2 A. The event concluded at 9:25, so he read</p> <p>3 his statement for 10 minutes, roughly 10 minutes.</p> <p>4 Q. Beginning at about 9?</p> <p>5 A. 9, 9:05 for about 10 minutes, and there</p> <p>6 was about 10 minutes or so of questions.</p> <p>7 Q. Okay. And then you went -- after 9:25,</p> <p>8 you went to your office.</p> <p>9 Correct?</p> <p>10 A. Correct.</p> <p>11 Q. And sent out those emails you just</p> <p>12 testified about?</p> <p>13 A. Correct.</p> <p>14 Q. You went to your office at about what</p> <p>15 time?</p> <p>16 A. Approximately 9:28.</p> <p>17 Q. And how long were you in your office?</p> <p>18 A. To the best of my recollection, 10</p> <p>19 minutes.</p> <p>20 Q. And what did you do during that time?</p> <p>21 A. I sent the emails to these particular</p> <p>22 reporters and prepared the email that would go out to</p>   |
| Page 207  | Page 209  |
| <p>1 time or --</p> <p>2 A. Yes.</p> <p>3 Q. Both at the same time?</p> <p>4 A. Yes.</p> <p>5 Q. All right. What did you say to them?</p> <p>6 A. They approached me to tell me that -- that</p> <p>7 the statement had been posted to the Web site and</p> <p>8 therefore they were planning to run their -- they --</p> <p>9 or had run their stories prior to 10 AM, had to do</p> <p>10 with the 10 AM embargo time.</p> <p>11 Q. All right. Now, you testified earlier</p> <p>12 Mr. Fisher read his statement.</p> <p>13 Correct?</p> <p>14 A. Correct.</p> <p>15 Q. And when was he finished reading his</p> <p>16 statement?</p> <p>17 About what time?</p> <p>18 A. 9:25 --</p> <p>19 Q. All right.</p> <p>20 A. -- AM.</p> <p>21 Q. And then he took questions?</p> <p>22 A. He did.</p>  | <p>1 my press lists at 10 AM with the statement attached</p> <p>2 Q. Prepared the email to go to whom?</p> <p>3 A. My press lists.</p> <p>4 Q. And then what did you do?</p> <p>5 A. To the best of my recollection, then I</p> <p>6 went back upstairs to Mr. Fisher's office to talk to</p> <p>7 him at the CNBC interview.</p> <p>8 Q. So you prepared the email, but you did not</p> <p>9 send it out, the one that was going to go to your</p> <p>10 press contacts?</p> <p>11 A. Correct.</p> <p>12 Q. You would wait till 10 o'clock, and then</p> <p>13 you would -- intending to come back and then send</p> <p>14 Now, you went back to Mr. Fisher's office,</p> <p>15 which was on the same floor as the --</p> <p>16 A. Yes --</p> <p>17 Q. -- diplomatic reception --</p> <p>18 A. -- third floor.</p> <p>19 Q. -- area?</p> <p>20 Was his office behind the diplomatic</p> <p>21 reception?</p> <p>22 In other words to reach his office, you</p> |

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|--|---|
| <p>1 would have gone through what door on our exhibit?</p> <p>2 A. His office was across the hall from the</p> <p>3 diplomatic reception room, and it was across the</p> <p>4 hall -- his -- the door to his office was across the</p> <p>5 hall from door number 1.</p> <p>6 Q. Okay. Could you mark Mr. Fisher's office.</p> <p>7 And that is exhibit what, Ms. Holahan?</p> <p>8 A. 5.</p> <p>9 Q. On exhibit 5, could you mark where</p> <p>10 Mr. Fisher's office would have been.</p> <p>11 A. (Complying.)</p> <p>12 Q. So you went back to go to Mr. Fisher's</p> <p>13 office to discuss with him the CNBC interview coming</p> <p>14 up?</p> <p>15 A. Correct.</p> <p>16 Q. All right. And what happened?</p> <p>17 You left your office, and then what</p> <p>18 happened?</p> <p>19 A. To the best of my knowledge or my</p> <p>20 recollection, I was in Mr. Fisher's office, and Tim</p> <p>21 Bitsberger, who was the deputy assistant secretary</p> <p>22 for -- in the office of financial markets -- and</p> | <p>1 were going to file their stories earlier or they had</p> <p>2 filed their stories earlier because of the posting</p> <p>3 onto the Web site.</p> <p>4 Q. And what do you remember them saying and</p> <p>5 who said what?</p> <p>6 A. I don't recall who said what.</p> <p>7 I recall them giving me the information.</p> <p>8 I recall being very surprised, shocked, and dismayed.</p> <p>9 And I recall then going back downstairs,</p> <p>10 talked to Frances, and she was the person who posted</p> <p>11 items to the Web site.</p> <p>12 Q. Do you remember talking to any other</p> <p>13 reporters that day other than CNBC and those 2</p> <p>14 reporters?</p> <p>15 A. I don't have a specific recollection of</p> <p>16 talking to other reporters, but I must have. It was</p> <p>17 a very, very busy day.</p> <p>18 Q. About how many people had attended the</p> <p>19 October 31st press conference?</p> <p>20 A. To the best of my recollection, there were</p> <p>21 approximately 40-plus bodies in the room.</p> <p>22 Q. Do you recall -- was that -- was that</p> |
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| <p>1 Bitsberger is B-I-T-S-B-E-R-G-E-R -- and he came in</p> <p>2 and announced or said that he believed that the</p> <p>3 markets were moving based on the information and that</p> <p>4 somehow it had gotten out.</p> <p>5 Q. And so Mr. Bitsberger was there with you</p> <p>6 and Mr. Fisher.</p> <p>7 Correct?</p> <p>8 A. Correct.</p> <p>9 Q. All right. Did Mr. Fisher say anything?</p> <p>10 A. I don't recall exactly what he said, but</p> <p>11 he was not happy to hear that.</p> <p>12 Q. Do you recall the substance of what he</p> <p>13 said?</p> <p>14 A. He wanted -- he wanted more information</p> <p>15 from Mr. Bitsberger about why Mr. Bitsberger thought</p> <p>16 that.</p> <p>17 Q. Did Mr. Bitsberger say anything else?</p> <p>18 A. He did.</p> <p>19 But at that time -- at that point, I left</p> <p>20 to go back downstairs to my office. And it was at</p> <p>21 that time to the best of my recollection that I</p> <p>22 encountered the 2 reporters who told me that they</p>         | <p>1 press conference more crowded than the press</p> <p>2 conferences you had covered before?</p> <p>3 A. No.</p> <p>4 Q. And where were you during the press</p> <p>5 conference?</p> <p>6 Where were you located?</p> <p>7 A. I stood to the left of the podium.</p> <p>8 Q. Okay. And you're going to mark that with</p> <p>9 an X or your name?</p> <p>10 A. Yes.</p> <p>11 Q. And that's on the exhibit?</p> <p>12 A. Yes.</p> <p>13 Q. Again for the record, it's exhibit --</p> <p>14 MR. ROSSETTI: 5.</p> <p>15 BY MR. THEODOROU:</p> <p>16 Q. -- 5.</p> <p>17 And you saw Frances Anderson at the</p> <p>18 beginning of the conference, correct, passing out</p> <p>19 copies of Mr. Fisher's statement?</p> <p>20 A. I did.</p> <p>21 Q. But you did not take a copy?</p> <p>22 A. No.</p>  |

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|---|---|
| <p>1 Q. Okay. Nor did you see what she was</p> <p>2 handing out?</p> <p>3 A. No.</p> <p>4 Q. All right. Now, when you testified</p> <p>5 earlier that you spoke first at the conference and</p> <p>6 you talked about embargo, you didn't say what embargo</p> <p>7 meant.</p> <p>8 Correct?</p> <p>9 A. Correct.</p> <p>10 Q. How long was the question-and-answer</p> <p>11 period after Mr. Fisher?</p> <p>12 A. Roughly 10 to 15 minutes.</p> <p>13 Q. Do you remember where Frances Anderson was</p> <p>14 during the press conference?</p> <p>15 A. I recall seeing her handing out the</p> <p>16 document, and I recall seeing her standing in the</p> <p>17 back of the room between doors 1 and 2 against the</p> <p>18 wall.</p> <p>19 Q. Do you remember whether she -- can you</p> <p>20 remember her being outside of the room?</p> <p>21 A. I recall her being in the hallway as well</p> <p>22 before and after the press conference.</p>  | <p>1 A. I'm not specifically aware of whose</p> <p>2 stories ran at what time, but it is a reasonable</p> <p>3 assumption that if the 2 of -- if those 2 media</p> <p>4 outlets were running their story early because it was</p> <p>5 on the Web site, then the entire pressroom knew about</p> <p>6 it.</p> <p>7 Q. Okay. Now, with Frances Anderson, wasn't</p> <p>8 she sent outside the conference by Paul Malvey to</p> <p>9 deal with charts during the conference?</p> <p>10 A. You'd have to ask her that. I don't know.</p> <p>11 Q. And wasn't it -- wasn't she outside the</p> <p>12 room when you were speaking?</p> <p>13 A. I specifically remember as I was giving</p> <p>14 the announcement, the first announcement about the</p> <p>15 embargo time, I was watching her hand out the</p> <p>16 document, the statement of Mr. Fisher.</p> <p>17 Q. All right.</p> <p>18 MR. THEODOROU: Let's go to the next --</p> <p>19 our next exhibit.</p> <p>20 (Holahan Exhibit No. 11</p> <p>21 was marked for</p> <p>22 identification.)</p> |
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| <p>1 Q. And when did you -- when was she out in</p> <p>2 the hallway?</p> <p>3 A. I recall seeing her in the hallway before</p> <p>4 the press conference began, and I recall seeing her</p> <p>5 afterwards.</p> <p>6 Q. How about during the conference?</p> <p>7 A. I was in the room, so I couldn't see what</p> <p>8 was in the hallway.</p> <p>9 Q. Did you see her in the room when you were</p> <p>10 talking?</p> <p>11 A. I did, yes. She was handing out the</p> <p>12 document when I was in -- first announced the embargo</p> <p>13 time was 10 o'clock.</p> <p>14 Q. Besides the 2 reporters you just testified</p> <p>15 about who told you that they were going to print</p> <p>16 their stories before the 10 AM embargo time, Jonathan</p> <p>17 Nicholson and Deborah Lagamarsino --</p> <p>18 A. M-hm.</p> <p>19 Q. -- are you aware of any other reporters</p> <p>20 who attended the October 31st press conference who</p> <p>21 disclosed information on the 30-year bond suspension</p> <p>22 before the 10 AM embargo time?</p> | <p>1 MR. ROSSETTI: Do you have a copy, please?</p> <p>2 MR. THEODOROU: I do.</p> <p>3 She's got -- can I have that back?</p> <p>4 THE WITNESS: Oh.</p> <p>5 I'm sorry. Pardon me.</p> <p>6 MR. THEODOROU: Thank you.</p> <p>7 My fault.</p> <p>8 MR. ROSSETTI: I'm sorry.</p> <p>9 We're on 11 now?</p> <p>10 MR. THEODOROU: 11.</p> <p>11 BY MR. THEODOROU:</p> <p>12 Q. All right. Directing your attention,</p> <p>13 Ms. Holahan, to exhibit 11.</p> <p>14 Have you seen that document before?</p> <p>15 A. No.</p> <p>16 Q. The document -- do you know where this --</p> <p>17 what this document is?</p> <p>18 A. Yes.</p> <p>19 Q. What is it?</p> <p>20 A. It is a copy of a headline that was</p> <p>21 running on the wire, the news wire, and it ran on</p> <p>22 October 31, 2001. It was posted at 9:52 AM, and it</p>  |

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|--|--|
| <p>1 was posted by Reuters, which is a news wire.</p> <p>2 Q. Okay. Did you ever learn about Reuters</p> <p>3 posting before -- posting the information about the</p> <p>4 suspension of the long bond before 10 AM?</p> <p>5 A. Did I ever learn about it?</p> <p>6 Q. Yeah, after October 31, or on that day,</p> <p>7 did you learn that Reuters ran?</p> <p>8 A. Yes.</p> <p>9 Because the Reuters reporter approached me</p> <p>10 in the hallway and told me --</p> <p>11 Q. Okay.</p> <p>12 A. -- and that's how I learned of the posting</p> <p>13 to the Web site.</p> <p>14 Q. In terms of when he came up to you?</p> <p>15 A. Yes.</p> <p>16 Q. It was Jonathan Nicholson.</p> <p>17 Correct?</p> <p>18 A. Correct.</p> <p>19 Q. All right. Now, at what time was this</p> <p>20 published?</p> <p>21 Was it 9:52 or 9:57?</p> <p>22 A. You know, I don't know. That would be a</p>  | <p>1 would this story have been on there?</p> <p>2 MS. WILLIAMS: Objection.</p> <p>3 A. I don't have technical knowledge of how</p> <p>4 that works. I just don't know.</p> <p>5 BY MR. THEODOROU:</p> <p>6 Q. Okay. But the story came out before 10</p> <p>7 o'clock?</p> <p>8 A. Correct.</p> <p>9 Q. By Reuters?</p> <p>10 A. Correct.</p> <p>11 Q. Now, did Treasury -- so Reuters violated</p> <p>12 the 10 AM embargo by publishing the report.</p> <p>13 Correct?</p> <p>14 A. They did.</p> <p>15 MS. WILLIAMS: Objection.</p> <p>16 BY MR. THEODOROU:</p> <p>17 A. Yes.</p> <p>18 Q. Did Reuters violate the embargo?</p> <p>19 A. Yes, they did.</p> <p>20 Q. Did Treasury take any action against the</p> <p>21 reporter or --</p> <p>22 A. No.</p>  |
| Page 219   | Page 221   |
| <p>1 question for Reuters. I don't know -- I mean, it</p> <p>2 says, received by the News Edge. News Edge was</p> <p>3 the -- was the wire itself.</p> <p>4 Q. So when it says, News Edge -- it's, News,</p> <p>5 and then capital E-D-G-E, slash, capital L-A-N.</p> <p>6 Do you see where it says, News Edge LAN?</p> <p>7 A. Yeah, I do.</p> <p>8 Q. What is that?</p> <p>9 A. News Edge is the organization that -- that</p> <p>10 runs all of the -- the wire stories. Like I could go</p> <p>11 onto News Edge and find the stories, find the</p> <p>12 headlines on the stories. Some are Reuters, some are</p> <p>13 Dow Jones, some are Associated Press, different</p> <p>14 wires.</p> <p>15 Q. Does Reuters use that service to</p> <p>16 distribute its reports?</p> <p>17 A. It does.</p> <p>18 Well, Reuters is its own wire, and then</p> <p>19 I'm not sure of how technically stories -- like if</p> <p>20 News Edge picks up stories from the Reuters wire or</p> <p>21 if Reuters pushes them to News Edge. I'm not sure.</p> <p>22 Q. If I got onto News Edge LAN at 9:52 AM,</p> | <p>1 Q. -- Reuters itself regarding this report?</p> <p>2 Why not?</p> <p>3 A. Because Treasury made the information</p> <p>4 public when it posted the document on the Web site.</p> <p>5 So at that point, we did not expect the newsroom to</p> <p>6 adhere to the embargo.</p> <p>7 Q. So the embargo no longer applied after the</p> <p>8 information had gotten out publicly from another</p> <p>9 source?</p> <p>10 A. It no longer applied after it was put out</p> <p>11 publicly by Treasury.</p> <p>12 Q. So the embargo didn't prohibit anyone from</p> <p>13 publishing or otherwise acting on Fisher's statements</p> <p>14 once Treasury posted on it -- posted it on its Web</p> <p>15 site.</p> <p>16 Correct?</p> <p>17 MS. WILLIAMS: Objection.</p> <p>18 A. Can you please rephrase the question.</p> <p>19 BY MR. THEODOROU:</p> <p>20 Q. The embargo did not prohibit anyone from</p> <p>21 publishing anything about the press conference once</p> <p>22 Mr. Fisher's statement was on Treasury's Web site.</p> |

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| <p>1 Correct?</p> <p>2 A. Correct.</p> <p>3 Q. And it didn't prohibit anyone from acting</p> <p>4 on the information once Mr. Fisher's statement was on</p> <p>5 the Web site?</p> <p>6 MS. WILLIAMS: Objection.</p> <p>7 A. I'm going to decline to respond to that.</p> <p>8 BY MR. THEODOROU:</p> <p>9 Q. Well, I don't think you can decline, or</p> <p>10 I'll file -- I will go on record: I'll file a motion</p> <p>11 to compel with the judge, because you got to answer</p> <p>12 questions, and responding -- failure to decline is no</p> <p>13 reason. I'm going to state that on the report. I</p> <p>14 don't know if you have counsel here today, but I'm</p> <p>15 going to ask you the question again.</p> <p>16 Did the embargo -- once it went on that</p> <p>17 Web site, did it prohibit anyone from acting or using</p> <p>18 the information?</p> <p>19 MS. WILLIAMS: Objection.</p> <p>20 A. The word acting is the word that I can't</p> <p>21 respond to.</p> <p>22 I deal with the media. And if the media</p> | <p>1 A. Correct.</p> <p>2 Q. All right. I'm not trying to trick you.</p> <p>3 But I will just for the record -- I mean,</p> <p>4 you know, whether you're going to decline or not,</p> <p>5 I'll file a motion to compel for failure to answer.</p> <p>6 MR. ROSSETTI: Nick, in all fairness to</p> <p>7 the witness, I think what she was trying to explain</p> <p>8 was that you're asking questions beyond her basis of</p> <p>9 knowledge.</p> <p>10 (Talking at the same time.)</p> <p>11 MR. THEODOROU: Hold on.</p> <p>12 One person speaks.</p> <p>13 Who is speaking?</p> <p>14 MR. ROSSETTI: I am.</p> <p>15 MS. WILLIAMS: I am.</p> <p>16 MR. THEODOROU: It's double. One person</p> <p>17 speaks.</p> <p>18 MS. WILLIAMS: I am --</p> <p>19 (Talking at the same time.)</p> <p>20 MS. WILLIAMS: (Indiscernible.)</p> <p>21 MR. THEODOROU: That's fair. That's fair.</p> <p>22 Okay?</p> |
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| <p>1 wants to run a story after we've made it public on</p> <p>2 our own Web site, then I cannot object.</p> <p>3 In terms of someone acting on the</p> <p>4 information itself, that's not a question that I can</p> <p>5 answer.</p> <p>6 BY MR. THEODOROU:</p> <p>7 Q. Well, the embargo --</p> <p>8 A. We don't prohibit anyone from acting on</p> <p>9 the information to begin with. The Treasury</p> <p>10 Department, office of public affairs doesn't.</p> <p>11 Q. Right.</p> <p>12 So once it got on the Web site, it's</p> <p>13 public information.</p> <p>14 Correct?</p> <p>15 A. Correct.</p> <p>16 Q. All right. So the embargo did not</p> <p>17 prohibit anyone from using that information?</p> <p>18 MS. WILLIAMS: Objection.</p> <p>19 A. From knowing that information.</p> <p>20 BY MR. THEODOROU:</p> <p>21 Q. It did not prohibit them from knowing it.</p> <p>22 Correct?</p>   | <p>1 I understand that.</p> <p>2 I don't want any speaking objections,</p> <p>3 either.</p> <p>4 But I think we clarified it.</p> <p>5 BY MR. THEODOROU:</p> <p>6 Q. Do you know who Brian Collins is?</p> <p>7 A. Yes, I do.</p> <p>8 Q. All right. Who is he?</p> <p>9 A. He's a reporter for National Mortgage</p> <p>10 News.</p> <p>11 Q. Are you aware that on approximately 9:35</p> <p>12 AM on October 31, 2001, Mr. Collins called Janice</p> <p>13 Smith, an official of Fannie Mae, and told her about</p> <p>14 Treasury's decision to suspend the 30-year bond?</p> <p>15 MS. WILLIAMS: Objection.</p> <p>16 A. I'm not aware of that conversation.</p> <p>17 BY MR. THEODOROU:</p> <p>18 Q. Did you ever become aware of it after</p> <p>19 October 31st?</p> <p>20 A. No.</p> <p>21 MS. WILLIAMS: Objection.</p> <p>22 BY MR. THEODOROU:</p>  |

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|---|---|
| <p>1 Q. Are you aware that he disclosed</p> <p>2 information about the press conference to someone</p> <p>3 before the 10 AM embargo?</p> <p>4 MS. WILLIAMS: Objection.</p> <p>5 A. I was not previously aware of that.</p> <p>6 BY MR. THEODOROU:</p> <p>7 Q. Until I just talked to you about it?</p> <p>8 A. Correct.</p> <p>9 MS. WILLIAMS: Objection.</p> <p>10 BY MR. THEODOROU:</p> <p>11 Q. Did the SEC talk to you about this?</p> <p>12 A. The SEC mentioned -- they asked me if I</p> <p>13 knew Brian Collins.</p> <p>14 Q. Did they mention that Mr. Collins</p> <p>15 disclosed information before the 10 AM embargo time?</p> <p>16 A. They did not tell me that, no.</p> <p>17 Q. Okay. When I just asked you this</p> <p>18 question, this is the first time that you learned</p> <p>19 about Mr. Collins doing that?</p> <p>20 MS. WILLIAMS: Objection.</p> <p>21 A. To the best of my recollection, yes.</p> <p>22 BY MR. THEODOROU:</p> | <p>1 statement get on the Web site?</p> <p>2 A. Frances Anderson posted all documents to</p> <p>3 the Web site.</p> <p>4 Q. Before Frances Anderson, had you ever</p> <p>5 directed any other employee to post a document on the</p> <p>6 Web site?</p> <p>7 A. We had a backup Web team that could post</p> <p>8 to the Web site, but it was Frances's responsibility</p> <p>9 to do so, and she would -- and she was the person who</p> <p>10 posted items unless she was out sick.</p> <p>11 Q. Did you know that previous -- before</p> <p>12 that -- that before October 31, 2001, that previous</p> <p>13 quarterly refunding announcements did not have fixed</p> <p>14 embargo times on the announcements?</p> <p>15 MS. WILLIAMS: Objection.</p> <p>16 A. I'm not aware of that.</p> <p>17 BY MR. THEODOROU:</p> <p>18 Q. Were you aware that on October 31, 2001,</p> <p>19 that prior announcements did not have embargo times</p> <p>20 on the announcements?</p> <p>21 MS. WILLIAMS: Objection.</p> <p>22 A. Can you be more specific about your</p> |
| Page 227  | Page 229  |
| <p>1 Q. Before today, did you know that at least 9</p> <p>2 additional people learned about Treasury's decision</p> <p>3 by 10 -- 9:50 AM?</p> <p>4 A. No, I'm --</p> <p>5 MS. WILLIAMS: Objection.</p> <p>6 A. -- not aware of that.</p> <p>7 BY MR. THEODOROU:</p> <p>8 Q. And did you know that at least 9</p> <p>9 additional persons learned about Treasury's decision</p> <p>10 to suspend the long bond by 9:50 AM as a result of</p> <p>11 Mr. Collins' call to Fannie Mae?</p> <p>12 MS. WILLIAMS: Objection.</p> <p>13 A. I'm not aware of that.</p> <p>14 BY MR. THEODOROU:</p> <p>15 Q. Do you were not aware of any call that</p> <p>16 Mr. Collins made regarding the press conference</p> <p>17 before 10 AM that day?</p> <p>18 A. That's correct.</p> <p>19 Q. In October 2001, what was the procedure</p> <p>20 for posting quarterly refunding statements on the Web</p> <p>21 site?</p> <p>22 In other words, how did the refunding</p> | <p>1 question, please.</p> <p>2 BY MR. THEODOROU:</p> <p>3 Q. Well, we showed you an announcement that</p> <p>4 Tony Fratto sent to you and had an embargo time, 10</p> <p>5 AM.</p> <p>6 Correct?</p> <p>7 A. Yes.</p> <p>8 Q. Did you know in October 2001, the prior</p> <p>9 announcements did not list embargo times?</p> <p>10 MS. WILLIAMS: Objection.</p> <p>11 A. I don't have any knowledge of that.</p> <p>12 BY MR. THEODOROU:</p> <p>13 Q. You did not review the press releases that</p> <p>14 Ms. Anderson distributed at the press conference; is</p> <p>15 that right?</p> <p>16 A. Correct.</p> <p>17 MS. WILLIAMS: Objection.</p> <p>18 BY MR. THEODOROU:</p> <p>19 Q. After you learned that the announcement</p> <p>20 had gone out on the Web site before 10 AM, did you go</p> <p>21 to the Web site and look at the document?</p> <p>22 A. The first thing I did was talk to Frances</p>  |

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|---|---|
| <p>1 and ask her if she had posted it, and she said that</p> <p>2 she had, so, no, I did not look it at on the Web</p> <p>3 site.</p> <p>4 MR. THEODOROU: Exhibit 12.</p> <p>5 (Holahan Exhibit No. 12</p> <p>6 was marked for</p> <p>7 identification.)</p> <p>8 BY MR. THEODOROU:</p> <p>9 Q. Ms. Holahan, do you see exhibit 12 that</p> <p>10 I've just given you?</p> <p>11 A. I do.</p> <p>12 Q. Do you recognize it?</p> <p>13 A. Yes.</p> <p>14 It is Mr. Fisher's statement.</p> <p>15 Q. And in fact that was Mr. Fisher's</p> <p>16 statement that was posted on the Web site.</p> <p>17 Correct?</p> <p>18 A. Yes, that's my understanding.</p> <p>19 That's the way it looks when I come</p> <p>20 (phonetic) -- when it's on the Web site.</p> <p>21 Q. In fact the Internet address is at the</p> <p>22 bottom of the page?</p>  | <p>1 roughly 9:43 AM.</p> <p>2 Q. And how did you learn that?</p> <p>3 A. I've read news reports of the event.</p> <p>4 Q. Once you learned that this document was</p> <p>5 posted before 10 AM or that the announcement went out</p> <p>6 before 10 AM on the Web site, what did you do?</p> <p>7 A. When I learned that information from the</p> <p>8 reporters?</p> <p>9 Q. Yes.</p> <p>10 A. I went down and I asked Frances if it was</p> <p>11 true, if she had posted the document in advance of 10</p> <p>12 AM.</p> <p>13 Q. All right. And what did she say?</p> <p>14 A. She said that she had.</p> <p>15 Q. Was anybody there with you?</p> <p>16 A. That very moment, no.</p> <p>17 Q. Okay. Do you recall walking to her desk</p> <p>18 at around 10 AM and telling her that she could post</p> <p>19 the statement on the Web site?</p> <p>20 A. Strangely I do. I do recall that.</p> <p>21 Q. Okay. You do.</p> <p>22 A. Well, it was 6 years ago.</p> |
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| <p>1 A. Yes.</p> <p>2 Q. Now, there's a document name to this.</p> <p>3 It says, PO 749?</p> <p>4 A. Correct.</p> <p>5 Q. What does that stand for?</p> <p>6 A. "PO" stands for Paul O'Neill, and the</p> <p>7 "749" is the sequence number.</p> <p>8 Q. And Paul O'Neill at the time was the</p> <p>9 Treasury secretary?</p> <p>10 A. Correct.</p> <p>11 Q. And 749 as a sequence number meant that</p> <p>12 this was the -- what?</p> <p>13 A. 749th release under Paul O'Neill?</p> <p>14 I'm not entirely sure. Frances would be</p> <p>15 able to answer that.</p> <p>16 Q. 749th press release?</p> <p>17 A. Like I said, I -- this is not -- I did not</p> <p>18 number them. Frances did, so she'd be the person to</p> <p>19 answer that question.</p> <p>20 Q. Do you know at what time this document was</p> <p>21 posted on the Web site?</p> <p>22 A. I have since learned that it was posted at</p> | <p>1 You know, I don't know. It sounds</p> <p>2 familiar.</p> <p>3 Q. All right. Well, what do you remember?</p> <p>4 A. I remember having -- I remember being at</p> <p>5 her desk having a conversation about the fact that it</p> <p>6 had gone on the Web site early. I remember having a</p> <p>7 conversation with the reporter that it had gone on</p> <p>8 the Web site early.</p> <p>9 Q. Was Mr. Bitsberger there at that time?</p> <p>10 A. I don't recall.</p> <p>11 Q. Was Mr. Brown -- Roseboro?</p> <p>12 A. I don't recall.</p> <p>13 Q. Okay.</p> <p>14 A. Things happened very quickly that morning.</p> <p>15 Q. What was your reaction when you learned</p> <p>16 that Ms. Anderson had put it out at 10:43 --</p> <p>17 A. Dismay.</p> <p>18 Q. -- or -- excuse me -- when she put it out</p> <p>19 before 10 AM.</p> <p>20 A. Dismay.</p> <p>21 Q. Were you angry with her?</p> <p>22 A. Yes.</p>   |

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|--|--|
| <p>1 Q. Do you recall yelling at her?</p> <p>2 A. I did not yell at her.</p> <p>3 Q. Do you recall -- was there any change in</p> <p>4 your tone of voice when you spoke with her?</p> <p>5 A. I'm sure there was.</p> <p>6 Q. And how would you describe your tone with</p> <p>7 her?</p> <p>8 A. Unhappy.</p> <p>9 Q. Now, you testified earlier today that you</p> <p>10 didn't communicate with her orally before the</p> <p>11 embargo, correct, the embargo time?</p> <p>12 A. I don't recall telling her that morning</p> <p>13 that the embargo was at 10 AM.</p> <p>14 Q. Okay. Did you tell her when you</p> <p>15 confronted her that morning that you had told her</p> <p>16 about the embargo by email?</p> <p>17 A. I don't recall.</p> <p>18 Q. But in fact there was no email where you</p> <p>19 told her about an embargo.</p> <p>20 Correct?</p> <p>21 A. I don't recall.</p> <p>22 Q. Did you subsequently discuss the early</p> | <p>1 Q. And do you recall what he said?</p> <p>2 A. I don't.</p> <p>3 Q. Are you aware that Mr. Fratto told</p> <p>4 Ms. Anderson that she did nothing wrong?</p> <p>5 MS. WILLIAMS: Objection.</p> <p>6 A. I have no recollection of that.</p> <p>7 BY MR. THEODOROU:</p> <p>8 Q. Did he ever tell you that she had not</p> <p>9 done -- that she did not do anything wrong?</p> <p>10 MS. WILLIAMS: Objection.</p> <p>11 A. No, I don't recall him ever telling me</p> <p>12 that.</p> <p>13 MR. THEODOROU: Could we go off the record</p> <p>14 for a second?</p> <p>15 Could we just take a 5-minute break?</p> <p>16 THE VIDEOGRAPHER: This is --</p> <p>17 MR. THEODOROU: I'm actually going pretty</p> <p>18 well.</p> <p>19 THE VIDEOGRAPHER: -- the end of tape</p> <p>20 number 3. Off the record at 2:55:09 PM.</p> <p>21 (Recess.)</p> <p>22 (Mr. Rossetti left the room.)</p>   |
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| <p>1 disclosure of the information with Tony Fratto?</p> <p>2 A. I did.</p> <p>3 Q. Okay. When -- did you discuss it that</p> <p>4 day?</p> <p>5 A. Yes.</p> <p>6 Q. When that day?</p> <p>7 A. It's my recollection that as soon as I</p> <p>8 learned from Frances that she had posted it to the</p> <p>9 Web site early, I told Tony. Tony was her</p> <p>10 supervisor.</p> <p>11 I was not. It was not my place to</p> <p>12 reprimand her. Obviously it was his -- you know, his</p> <p>13 area of responsibility and authority to handle.</p> <p>14 Q. What did you say to her, I mean, to</p> <p>15 Ms. Fratto -- Mr. Fratto?</p> <p>16 A. I don't remember the exact words.</p> <p>17 Q. What did he say to you?</p> <p>18 A. I don't remember the exact words.</p> <p>19 Q. Well, what was the substance of the</p> <p>20 conversation that you had with him?</p> <p>21 A. I recall telling him that she posted it</p> <p>22 early.</p>    | <p>1 THE VIDEOGRAPHER: This is tape number 4</p> <p>2 in the videotape deposition of Elizabeth Holahan. On</p> <p>3 the record at 3:06:21 PM on August 23rd, 2006.</p> <p>4 (Holahan Exhibit No. 13</p> <p>5 was marked for</p> <p>6 identification.)</p> <p>7 (Discussion off the record.)</p> <p>8 BY MR. THEODOROU:</p> <p>9 Q. All right. Ms. Holahan, do you see</p> <p>10 exhibit 13?</p> <p>11 A. I do.</p> <p>12 Q. Okay. Have you seen this document before?</p> <p>13 A. I don't recall, but I must have.</p> <p>14 Q. Okay. So this wasn't one of the documents</p> <p>15 that the SEC showed you before today?</p> <p>16 A. Correct.</p> <p>17 Q. All right. Do you see where it says,</p> <p>18 statement that the office of public affairs put out</p> <p>19 later in the day of October 31, 2001?</p> <p>20 A. Yes.</p> <p>21 Q. All right. And this is after the release</p> <p>22 of the statement on the Web site at 9:43.</p> |

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|--|--|
| <p>1 Now, what it said here was -- it says --</p> <p>2 if you look at the document, it says: This</p> <p>3 announce- -- the announcement was inadvertently</p> <p>4 posted on the Treasury Web site at approximately 9:50</p> <p>5 AM. Treasury regrets that this occurred and will</p> <p>6 work to ensure the integrity of the announcement</p> <p>7 process.</p> <p>8 Do you see that?</p> <p>9 A. I do.</p> <p>10 Q. Okay. Do you know who at Treasury</p> <p>11 prepared this document?</p> <p>12 A. I believe Tony Fratto wrote it.</p> <p>13 Q. Do you recall if you were involved in the</p> <p>14 preparation of this document?</p> <p>15 A. I don't recall.</p> <p>16 Q. All right. Do you recall whether an</p> <p>17 investigation was conducted about the timing at which</p> <p>18 the -- Mr. Fisher's statement was posted on the Web</p> <p>19 site?</p> <p>20 A. I believe there was an investigation.</p> <p>21 Q. Yeah.</p> <p>22 I'm talking about that day when they</p>  | <p>1 Q. Well, did you ever learn that it was</p> <p>2 posted on the server at least at 9:40 AM?</p> <p>3 MS. WILLIAMS: Objection.</p> <p>4 A. You know, I don't have any information</p> <p>5 about the timing of when it was posted.</p> <p>6 BY MR. THEODOROU:</p> <p>7 Q. Okay.</p> <p>8 A. I just know that I read press reports at</p> <p>9 9:43.</p> <p>10 BY MR. THEODOROU:</p> <p>11 Q. Besides Tony Fratto, did you talk to</p> <p>12 anybody else at Treasury about the premature posting</p> <p>13 of Mr. Fisher's statements on the Web site?</p> <p>14 A. I don't recall specifically who, but I</p> <p>15 know there was a number of conversations back and</p> <p>16 forth between the office of public affairs and the</p> <p>17 office of domestic finance, so I'm sure that I did.</p> <p>18 Q. All right. Did you ever talk with</p> <p>19 Michelle Davis about the premature posting?</p> <p>20 A. I don't recall.</p> <p>21 I wonder if she was away maybe when this</p> <p>22 occurred. She was traveling with the secretary. I</p>                            |
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| <p>1 said -- how did they conclude it was 9:50 AM?</p> <p>2 A. Oh, I don't know.</p> <p>3 Q. Okay. And do you know what were the</p> <p>4 basis -- what was the basis for stating that Fisher's</p> <p>5 statement was inadvertently posted on the Web site</p> <p>6 approximately 9:50 AM?</p> <p>7 A. About the information had been embargoed</p> <p>8 until 10 and then it was disposed of early, I assume.</p> <p>9 Q. All right. But did you subsequently learn</p> <p>10 that it was actually released at least at 9:43 AM?</p> <p>11 A. I wasn't involved with that.</p> <p>12 Q. So you don't know how the --</p> <p>13 A. Tony Fratto was sort of, because Frances</p> <p>14 was someone that reported to him. He was involved</p> <p>15 with what had happened on her end.</p> <p>16 Q. So you don't know how Treasury came up</p> <p>17 with the 9:50 AM in this particular document?</p> <p>18 A. I don't.</p> <p>19 Q. Did you ever learn that Mr. Fisher's</p> <p>20 statement was posted on the Internet earlier than</p> <p>21 9:50 AM?</p> <p>22 A. Where on the Internet?</p> | <p>1 can't definitely recall having a conversation with</p> <p>2 her about it.</p> <p>3 Q. Other than the discussion that you had</p> <p>4 with Mr. Fratto and Mr. Fisher that day, did you have</p> <p>5 any other discussions with Mr. Fisher about the</p> <p>6 premature posting on the Web site?</p> <p>7 A. I'm sorry.</p> <p>8 Other than the conversation I had with him</p> <p>9 that day, did I have any other conversation?</p> <p>10 Q. Yeah.</p> <p>11 Did you have any other conversations with</p> <p>12 him concerning the early release of information?</p> <p>13 A. I mean, we -- I'm not sure what you're</p> <p>14 asking. I mean, I talked to him that day. He was</p> <p>15 aware of it and then --</p> <p>16 Q. Right.</p> <p>17 I asked you about that.</p> <p>18 Other than that conversation, did you have</p> <p>19 any other conversations with Pete Fisher about the</p> <p>20 early posting of this statement on the Web site?</p> <p>21 A. I recall going somewhere with him -- I</p> <p>22 think it was that day -- and we were in a cab, and we</p> |

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|--|--|
| <p>1 were talking about it in the cab.</p> <p>2 Q. Okay. And what did he say?</p> <p>3 A. I recall him saying that, you know, what's</p> <p>4 done is done, essentially.</p> <p>5 Q. Do you recall anything else?</p> <p>6 A. I don't, no.</p> <p>7 Q. Did you say anything in that conversation?</p> <p>8 A. I recall apologizing to him on behalf of</p> <p>9 public affairs for what had occurred, yes. It was my</p> <p>10 responsibility to ensure the event went seamlessly</p> <p>11 and it did not, so I apologized to him.</p> <p>12 Q. Did you say anything else?</p> <p>13 A. I don't recall exactly what I said.</p> <p>14 Q. Did you ever have a discussion with</p> <p>15 Timothy Bitsberger about the premature disclosure of</p> <p>16 Mr. Fisher's statements?</p> <p>17 A. I may have. I don't recall.</p> <p>18 Q. Brian Roseboro?</p> <p>19 A. I may have. I don't recall.</p> <p>20 Q. Do you recall in any way discussions that</p> <p>21 you had with either of those men?</p> <p>22 A. That day and this particular matter, I</p>                            | <p>1 Q. How long was the discussion?</p> <p>2 A. 5 minutes.</p> <p>3 Q. Was anybody else present?</p> <p>4 A. No.</p> <p>5 Q. What did Mr. Nichols say or what was the</p> <p>6 substance of the discussion?</p> <p>7 A. I recall giving him a rundown of all the</p> <p>8 things that had gone wrong and telling him, and just,</p> <p>9 you know, expressing my -- I said I felt badly about</p> <p>10 it.</p> <p>11 Q. And what were all the things that went</p> <p>12 wrong?</p> <p>13 A. Well, there was a consultant that was</p> <p>14 somehow in this press conference that was meant for</p> <p>15 the media. The information was leaked out. There</p> <p>16 was press reports of early trading.</p> <p>17 This press release was posted to the Web</p> <p>18 site early, which is something that we could control,</p> <p>19 and we had been forced to apologize for it, and so</p> <p>20 just -- you know, there were a number of things that</p> <p>21 did not go as planned.</p> <p>22 Q. Not the best day?</p> |
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| <p>1 mean, I'm sure I talked to them, but I don't recall</p> <p>2 exactly when the conversation was and when it</p> <p>3 occurred and where.</p> <p>4 Q. How about after that day?</p> <p>5 Do you recall any conversations regarding</p> <p>6 the premature release of information about Ms. Davis,</p> <p>7 Michelle Davis?</p> <p>8 A. I don't specifically recall, but it's</p> <p>9 not -- it wouldn't -- I mean, she was the head of</p> <p>10 public affairs, so it's not unreasonable assumption</p> <p>11 that I would have discussed with her --</p> <p>12 Q. And you --</p> <p>13 A. -- and told her about it.</p> <p>14 I mean, I remember having a conversation</p> <p>15 with Rob Nichols about it, who was her deputy, and</p> <p>16 so -- and I'm wondering if I did that because she was</p> <p>17 out of town, is why I'm thinking -- I can't</p> <p>18 specifically recall though.</p> <p>19 Q. When did you have the conversation with</p> <p>20 Rob Nichols?</p> <p>21 A. I can't recall if it was that day or the</p> <p>22 next day. I just can't recall.</p> | <p>1 MS. WILLIAMS: Object --</p> <p>2 A. Some things -- well, we'll just leave it</p> <p>3 at that.</p> <p>4 BY MR. THEODOROU:</p> <p>5 Q. Anything else besides, you know, the</p> <p>6 leaking out of the press report, the early trading,</p> <p>7 the early release, Mr. Davis being there?</p> <p>8 Anything else in terms of what went wrong?</p> <p>9 A. Nothing comes to mind.</p> <p>10 Q. Subsequent to October 31, 2001, did you</p> <p>11 have any other discussions with Mr. Fisher about the</p> <p>12 premature leak -- I mean, the premature disclosure of</p> <p>13 the information?</p> <p>14 A. I don't recall.</p> <p>15 Q. How about Mr. Bitsberger?</p> <p>16 A. I don't recall.</p> <p>17 Q. Mr. Roseboro?</p> <p>18 A. I don't recall.</p> <p>19 Q. Do you recall -- other than the general</p> <p>20 counsel's office at Treasury, do you recall talking</p> <p>21 to anybody else at Treasury about the premature</p> <p>22 disclosure of information besides those people and</p>                   |

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|--|---|
| <p>1 Q. It's all right.</p> <p>2 A. -- coming into the office and --</p> <p>3 Q. I knew that was coming.</p> <p>4 A. -- having a conversation and giving him</p> <p>5 the email. I recall giving him the emails.</p> <p>6 Q. And those are the emails you testified</p> <p>7 about earlier --</p> <p>8 A. Yes.</p> <p>9 Q. -- the emails --</p> <p>10 A. Correct.</p> <p>11 Q. -- to Ms. Anderson that are in the</p> <p>12 document?</p> <p>13 A. The ones -- exhibits 6 and 7.</p> <p>14 Q. Now, in his report, he said that you</p> <p>15 arranged a meeting for -- with Mr. Fratto.</p> <p>16 Do you see that at the bottom of --</p> <p>17 A. I do.</p> <p>18 Q. -- page --</p> <p>19 A. I think we walked down to Tony's office.</p> <p>20 Q. Who was at that meeting?</p> <p>21 You, Mr. Vagle, Mr. Fratto?</p> <p>22 A. I don't remember exactly that meeting, but</p>   | <p>1 office before that, the Inspector General's Office?</p> <p>2 A. I don't recall.</p> <p>3 Q. Now, when you met with the SEC and someone</p> <p>4 from the Office of General Counsel of the Treasury on</p> <p>5 November 7th, did they explain the reason for the</p> <p>6 investigation?</p> <p>7 A. Yes.</p> <p>8 Q. Okay. And what did they say?</p> <p>9 A. They explained that the Securities and</p> <p>10 Exchange Commission was there to interview people</p> <p>11 that had been involved with this particular situation</p> <p>12 and to answer the questions truthfully.</p> <p>13 Q. Did anyone at Treasury ever tell you that</p> <p>14 you violated any Treasury policies or rules on</p> <p>15 embargoes?</p> <p>16 A. No.</p> <p>17 Q. Were you ever informed by anyone at</p> <p>18 Treasury that you had done something wrong on October</p> <p>19 31st?</p> <p>20 A. No.</p> <p>21 Q. Do you know if Treasury took any</p> <p>22 disciplinary or employment action against anyone</p> |
| Page 251   | Page 253  |
| <p>1 that's what it appears to indicate from this memo.</p> <p>2 Q. Do you remember what was discussed at that</p> <p>3 meeting with Mr. Fratto?</p> <p>4 A. I don't specifically recall the meeting</p> <p>5 itself, so I'm just going off the memo here.</p> <p>6 Q. All right. Now, I showed you as exhibit 1</p> <p>7 today the memorandum of activity or the summary of</p> <p>8 your interview with Mr. Sporkin and Ms. Filou of the</p> <p>9 SEC.</p> <p>10 Do you remember that?</p> <p>11 A. I do.</p> <p>12 Q. Was the Office of Inspector General of the</p> <p>13 Department of the Treasury present, someone from</p> <p>14 Treasury present at that?</p> <p>15 A. I mean, according to the memorandum, it</p> <p>16 says that there was someone there from IG's office,</p> <p>17 but I don't recall who that person was.</p> <p>18 Q. But you do remember somebody from the</p> <p>19 general counsel's office?</p> <p>20 A. It was Megan.</p> <p>21 Q. Now, before that meeting on November 7,</p> <p>22 2001, did you speak to anybody else from the IG's</p> | <p>1 because of the events of October 31st?</p> <p>2 A. I'm not aware of any action taken.</p> <p>3 Q. And after October 31st, did you continue</p> <p>4 to work on quarterly refunding press conferences</p> <p>5 announcements?</p> <p>6 A. I did, yes.</p> <p>7 Q. Did Treasury make any changes to its</p> <p>8 policies and procedures in quarterly refunding press</p> <p>9 conferences following October 31st?</p> <p>10 A. Yes, it did.</p> <p>11 Q. Okay. And when were those changes made?</p> <p>12 A. Immediately after the 31st, and they were</p> <p>13 in place for the subsequent quarterly refunding</p> <p>14 announcements.</p> <p>15 Q. And who contributed to the changes?</p> <p>16 A. Tony Fratto, myself.</p> <p>17 Q. Anybody else?</p> <p>18 A. Not that I can recall.</p> <p>19 Q. All right. And what kind of changes were</p> <p>20 made?</p> <p>21 A. Instead of having a press conference in</p> <p>22 order to announce the information, the information</p>                  |

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| <p>1 Ms. Anderson?</p> <p>2 A. I recall there just being general</p> <p>3 discussions amongst the other spokespeople and myself</p> <p>4 about how to avoid something like that from happening</p> <p>5 again.</p> <p>6 Q. And who were the other spokespeople?</p> <p>7 A. Tera Bradshaw and Tasia Scolinos.</p> <p>8 Q. Okay. Now, subsequent to October 31st,</p> <p>9 2001, did you ever meet with anybody from the</p> <p>10 Treasury Department's general counsel's office about</p> <p>11 the incident -- about what happened on October 31st?</p> <p>12 A. I recall the meeting on December the</p> <p>13 7th -- not December -- November the 7th, I believe</p> <p>14 that was -- resulted in a memorandum of activity,</p> <p>15 exhibit 1 --</p> <p>16 Q. Right.</p> <p>17 A. -- and there were general counsel</p> <p>18 attorneys present at that, but I don't recall</p> <p>19 additional conversations.</p> <p>20 Q. Did you ever meet with David Aufhauser of</p> <p>21 the general counsel's office about this?</p> <p>22 A. I don't recall meeting with David, no.</p> | <p>1 been marked as exhibit 14, Ms. Holahan, have you ever</p> <p>2 seen that document before?</p> <p>3 A. I have not.</p> <p>4 Q. So this was not one of the documents that</p> <p>5 was showed to you by the SEC or Treasury.</p> <p>6 Correct?</p> <p>7 A. Pardon me?</p> <p>8 Q. This was not one of the documents showed</p> <p>9 to you before today's deposition --</p> <p>10 A. Correct.</p> <p>11 Q. -- with the SEC lawyers?</p> <p>12 A. Correct.</p> <p>13 Q. All right. Well, it says -- do you know</p> <p>14 who Steven Vagle is?</p> <p>15 A. I don't recall.</p> <p>16 The name is familiar, but I don't recall</p> <p>17 if he was in the Office of General Counsel.</p> <p>18 Q. I'll represent to you that he was.</p> <p>19 A. Okay.</p> <p>20 Q. And it says on the re line of this</p> <p>21 memorandum to file: My November 1st, 2001,</p> <p>22 investigation showed that the time of publication on</p> |
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| <p>1 Q. Did you ever meet with Megan Hills?</p> <p>2 A. Yes.</p> <p>3 Megan was the general counsel attorney</p> <p>4 that was present for the initial interview with the</p> <p>5 SEC on November the 7th.</p> <p>6 Q. Okay. So Megan was present for that.</p> <p>7 Did you ever meet with Megan again about</p> <p>8 this incident?</p> <p>9 A. I don't recall doing so.</p> <p>10 Q. How about Francine Kerner?</p> <p>11 A. That name rings a bell, but, no, I don't</p> <p>12 have a specific recollection of a meeting with her.</p> <p>13 Q. How about Steve Vagle?</p> <p>14 A. Again, the name rings a bell, but I don't</p> <p>15 have a specific recollection of a subsequent meeting.</p> <p>16 Q. All right.</p> <p>17 MR. THEODOROU: Exhibit 14.</p> <p>18 (Holahan Exhibit No. 14</p> <p>19 was marked for</p> <p>20 identification.)</p> <p>21 BY MR. THEODOROU:</p> <p>22 Q. Now, directing your attention to what's</p>   | <p>1 the Treasury Web site of Peter Fisher's remarks on</p> <p>2 the 30-year bond was 9:43 AM October 31, 2001.</p> <p>3 Do you see that?</p> <p>4 A. I do.</p> <p>5 Q. Now, do you recall speaking to him on or</p> <p>6 about November 1st, 2001?</p> <p>7 A. Vaguely.</p> <p>8 Q. All right.</p> <p>9 A. I -- you know, I don't know.</p> <p>10 Q. If you look, 1, 2 --</p> <p>11 A. May I read this, please?</p> <p>12 Q. I beg your pardon?</p> <p>13 A. Can I read through this, please?</p> <p>14 Q. Sure.</p> <p>15 (Pause.)</p> <p>16 A. Okay.</p> <p>17 BY MR. THEODOROU:</p> <p>18 Q. Have you looked at it?</p> <p>19 A. I have, yes.</p> <p>20 Q. So do you recall meeting with Mr. Vagle?</p> <p>21 A. I do now, yes. I do remember vaguely --</p> <p>22 sorry -- him --</p>  |

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|--|--|
| <p>1 was given to the Treasury pressroom reporters in<br/> 2 advance of a 9 o'clock embargo. It was done in -- in<br/> 3 the Treasury pressroom in what is referred to as a<br/> 4 lockdown.</p> <p>5 So the Treasury reporters would be in the<br/> 6 room. The doors would be shut. No one was allowed<br/> 7 to leave. No one was allowed to enter once the<br/> 8 information was about to be disseminated.</p> <p>9 There was a reading of rules, ground<br/> 10 rules, that I would read verbally. Everyone present<br/> 11 would have to stand there and listen. I would<br/> 12 tape-record myself reading those rules. I would ask,<br/> 13 are there any questions.</p> <p>14 I was very specific about the meaning of<br/> 15 the word embargo. I was very specific about who the<br/> 16 information could be disseminated to other than the<br/> 17 reporter himself, and it was a very -- you know, that<br/> 18 we allowed them a very brief time to write their<br/> 19 stories.</p> <p>20 Then at 9 AM the embargo was lifted and<br/> 21 the information was posted upon the Treasury Web<br/> 22 site, and they filed their stories at the same time.</p> | <p>1 Correct?</p> <p>2 A. Correct.</p> <p>3 Q. And when you say, lockdown, were they<br/> 4 actually locked in the room?</p> <p>5 A. The doors were shut.</p> <p>6 They were not physically locked. That<br/> 7 would be a fire hazard.</p> <p>8 Q. The doors were shut.</p> <p>9 And was someone then posted outside to<br/> 10 ensure that nobody left or entered?</p> <p>11 A. I stood by one door, and the other door at<br/> 12 the time was right next to our reporter's desk, and<br/> 13 that reporter agreed not to -- you know, not to<br/> 14 permit anyone to come or go.</p> <p>15 Q. So in contrast to what happened on October<br/> 16 31st, there was no press conference.</p> <p>17 Correct?</p> <p>18 A. Correct.</p> <p>19 Q. There was a lockdown?</p> <p>20 A. Correct.</p> <p>21 Q. Which was not in place on October 31st.</p> <p>22 Correct?</p> |
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| <p>1 Q. So there was no press conference?</p> <p>2 A. Correct.</p> <p>3 Q. Now, you said you were very specific of<br/> 4 who they could disseminate the information to.</p> <p>5 Who could they disseminate the information<br/> 6 to?</p> <p>7 A. Only their editors.</p> <p>8 Q. And they would get the press -- the<br/> 9 announcement at what time under the new rules?</p> <p>10 A. Approximately 8:45.</p> <p>11 Q. And they were given how much time to write<br/> 12 the story?</p> <p>13 A. 15 minutes.</p> <p>14 Q. And during that time, they could call<br/> 15 their editors?</p> <p>16 A. Yes.</p> <p>17 Q. And you were specific about -- you were<br/> 18 very specific that only their editors at their media<br/> 19 outlets?</p> <p>20 A. Correct.</p> <p>21 Q. So this was a change in procedure from<br/> 22 what you had done on October 31st, 2001?</p>   | <p>1 A. That's correct.</p> <p>2 All credentials were checked, and there<br/> 3 was a sign-in sheet.</p> <p>4 Q. Credentials were checked, and there was a<br/> 5 sign-in sheet, which was not in effect on October<br/> 6 31st?</p> <p>7 A. Correct.</p> <p>8 Q. Who checked the credentials under the new<br/> 9 procedures?</p> <p>10 A. I did.</p> <p>11 Q. And they were to be credentials issued by<br/> 12 your office --</p> <p>13 A. Correct.</p> <p>14 Q. -- as opposed to anybody else?</p> <p>15 A. That's correct.</p> <p>16 Q. So that you would not have the situation<br/> 17 of Mr. Malvey's office issuing credentials in the<br/> 18 future.</p> <p>19 Correct?</p> <p>20 A. When I say, credentials, I mean, they were<br/> 21 media credentials. Mr. Malvey's office could not<br/> 22 have issued a media credentials. They were simply</p>        |

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|--|---|
| <p>1 allowing someone to be cleared into the building.</p> <p>2 Q. Was anybody -- were any nonmedia people</p> <p>3 under these news procedures allowed into these</p> <p>4 conferences?</p> <p>5 A. Absolutely not.</p> <p>6 Q. So then you would not have nonmedia</p> <p>7 people?</p> <p>8 A. Correct.</p> <p>9 The procedures are very closely aligned</p> <p>10 with how the Treasury pressroom handles the Fed open</p> <p>11 market committee announcement of the interest rates.</p> <p>12 Very similar. Actually it was more stringent than</p> <p>13 that.</p> <p>14 Q. And there was no question-and-answer</p> <p>15 session?</p> <p>16 A. Correct.</p> <p>17 Q. Because there was no press conference?</p> <p>18 A. Correct.</p> <p>19 We -- I believe we would have an official</p> <p>20 there to answer questions, general questions, sort of</p> <p>21 a background, because obviously it's in our interest</p> <p>22 that the stories are accurate, so we had to have a</p> | <p>1 Q. And what is it?</p> <p>2 A. It is a press release that we issued -- I</p> <p>3 don't know the date -- but we issued it to the media</p> <p>4 to explain how the procedures would be handled going</p> <p>5 forward.</p> <p>6 Basically, there would not be a news</p> <p>7 conference.</p> <p>8 Q. And who drafted this press release?</p> <p>9 A. To the best of my recollection, I did.</p> <p>10 Q. But you don't recall exactly when it went</p> <p>11 out?</p> <p>12 A. I don't.</p> <p>13 Q. But it was to govern the next refunding</p> <p>14 conference after the October 31st conference.</p> <p>15 Correct?</p> <p>16 A. Correct.</p> <p>17 Q. And that was to take place on January</p> <p>18 30th, 2002?</p> <p>19 A. January 30th?</p> <p>20 Yes.</p> <p>21 Q. Okay. Now, it says -- if I can direct</p> <p>22 your attention to the second paragraph, it says:</p>  |
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| <p>1 policy person there to answer some questions, but not</p> <p>2 of a -- you know -- they're just basic questions, not</p> <p>3 anything more complicated.</p> <p>4 (Holahan Exhibit No. 15</p> <p>5 was marked for</p> <p>6 identification.)</p> <p>7 BY MR. THEODOROU:</p> <p>8 Q. Okay. Ms. Holahan, I have -- now you have</p> <p>9 in front of you exhibit 15.</p> <p>10 Do you recognize that document?</p> <p>11 A. I do.</p> <p>12 I have not seen it in a long time, though.</p> <p>13 Q. Okay. But do you know what it is?</p> <p>14 A. I'd like to read it if you don't mind.</p> <p>15 Q. Sure.</p> <p>16 (Pause.)</p> <p>17 A. Okay.</p> <p>18 BY MR. THEODOROU:</p> <p>19 Q. Have you looked at it?</p> <p>20 A. I have.</p> <p>21 Q. And do you recognize the document?</p> <p>22 A. Yes.</p>  | <p>1 Starting with the next scheduled refunding</p> <p>2 announcement on January 30th, 2002, Treasury's office</p> <p>3 of public affairs will post the announcement on the</p> <p>4 Treasury Web site at 9 AM.</p> <p>5 So is that when it would officially be</p> <p>6 announced?</p> <p>7 A. Yes.</p> <p>8 Q. To the world?</p> <p>9 A. Yes.</p> <p>10 Q. And again the announcement also be</p> <p>11 delivered to credentialed members of the media in the</p> <p>12 Treasury pressroom shortly before 9 AM.</p> <p>13 And you testified a few minutes ago that</p> <p>14 would be at 8:45?</p> <p>15 A. Roughly.</p> <p>16 Q. All right. With lockdown embargo rules?</p> <p>17 A. Correct.</p> <p>18 Q. And that ties into what you testified</p> <p>19 about earlier that there was a lockdown, so that they</p> <p>20 could not leave and nobody could enter beginning at</p> <p>21 what time?</p> <p>22 A. If we gave them the documents at 8:45,</p> |

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|--|--|
| <p>1 then at 8:45. The documents were not given out until</p> <p>2 the doors to the room were closed.</p> <p>3 Q. The next paragraph says: The traditional</p> <p>4 practice for releasing the quarterly refunding</p> <p>5 announcement at a news conference will be</p> <p>6 discontinued.</p> <p>7 That is, the news conference was held</p> <p>8 (phonetic) -- was -- there would not be a news</p> <p>9 conference.</p> <p>10 Correct?</p> <p>11 A. Correct.</p> <p>12 Q. Which is what you testified earlier.</p> <p>13 So then in contrast to the October</p> <p>14 conference, there was no press conference.</p> <p>15 Correct?</p> <p>16 There was a lockdown so that after a</p> <p>17 certain period of time, nobody could come or go, in</p> <p>18 contrast to the October conference where there was no</p> <p>19 lockdown in effect.</p> <p>20 Correct?</p> <p>21 A. M-hm, correct.</p> <p>22 Q. Only credentialed media, credentialed by</p> | <p>1 2001, conference with Mr. Davis, who was not a member</p> <p>2 the media got in, only members of the media could</p> <p>3 attend --</p> <p>4 A. Correct.</p> <p>5 Q. -- these conferences in the future. That</p> <p>6 was the difference.</p> <p>7 And there were also -- in contrast to the</p> <p>8 October 31st conference, there were -- there was also</p> <p>9 sign-in sheets and credential checks by you?</p> <p>10 A. Yes.</p> <p>11 Q. Were there any other differences that you</p> <p>12 can recall between October 31st and the quarterly</p> <p>13 refunding conferences that followed?</p> <p>14 Any other differences?</p> <p>15 A. We explained to them -- I explained to</p> <p>16 them what an embargo was, even though as reporters</p> <p>17 they obviously knew what that was. I explained what</p> <p>18 it meant, and I asked if there were any questions for</p> <p>19 anyone who might not understand.</p> <p>20 Q. So you explained beginning in January</p> <p>21 specifically what an embargo is?</p> <p>22 A. Yes.</p> |
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| <p>1 the office of public affairs, could attend?</p> <p>2 A. No.</p> <p>3 "Credentialed" means that you are a member</p> <p>4 of media with a press pass, a press credential from</p> <p>5 your organization with a photo ID. That's</p> <p>6 credentialed.</p> <p>7 Q. But those credentials could only come from</p> <p>8 your office?</p> <p>9 A. As a -- no. Let me explain.</p> <p>10 A member of the media has credentials from</p> <p>11 their own organization --</p> <p>12 Q. Yes.</p> <p>13 A. -- to prove who they are --</p> <p>14 Q. Yes.</p> <p>15 A. -- and then in order to get into the</p> <p>16 Treasury Department, they have to have something that</p> <p>17 we issue them.</p> <p>18 In order to get what we issue them, they</p> <p>19 have to show us their own credentials.</p> <p>20 So then we --</p> <p>21 Q. So in order -- right.</p> <p>22 In order -- in contrast to the October 31,</p>                                    | <p>1 Q. And what did you say an embargo is?</p> <p>2 A. I --</p> <p>3 Q. As best you can recall.</p> <p>4 A. Okay. As best I can recall, I explained</p> <p>5 that an embargo means that the information is not to</p> <p>6 be disseminated outside of this room or to your</p> <p>7 editor only before 9 AM. Does anyone understand --</p> <p>8 does anyone have a question about that. Does</p> <p>9 everyone understand that.</p> <p>10 And everyone would have to either nod or</p> <p>11 say yes or acknowledge in some way that they'd heard</p> <p>12 what I said.</p> <p>13 MR. THEODOROU: Okay. I have no further</p> <p>14 questions at this time.</p> <p>15 Thank you.</p> <p>16 THE WITNESS: You're welcome.</p> <p>17 MS. WILLIAMS: I have a few questions,</p> <p>18 Ms. Holahan.</p> <p>19 MR. THEODOROU: Can we take a 5-minute</p> <p>20 break before you start?</p> <p>21 MS. WILLIAMS: Sure.</p> <p>22 THE VIDEOGRAPHER: Off the record at</p>  |

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|---|--|
| <p>1 3:38:08 PM.<br/>2 (Recess.)<br/>3 THE VIDEOGRAPHER: Back on the record at<br/>4 3:42:31 PM.<br/>5<br/>6 EXAMINATION BY COUNSEL FOR PLAINTIFF<br/>7 BY MS. WILLIAMS:<br/>8 Q. Ms. Holahan, I have a few questions.<br/>9 First, I think you testified in response<br/>10 to Mr. Theodorou's questions that you had some sort<br/>11 of security clearance at Treasury?<br/>12 A. I did.<br/>13 Q. Could you tell me what you had to do to<br/>14 get that clearance?<br/>15 A. I had to be interviewed and background<br/>16 check conducted by -- I believe it was GPO.<br/>17 Q. What does GPO stand for?<br/>18 A. Government personnel office.<br/>19 Q. Okay. And was there anything else?<br/>20 A. No.<br/>21 Q. Was there any sort of explanation provided<br/>22 to you about information that you could and could not</p> | <p>1 MR. THEODOROU: Give me a break.<br/>2 (Phonetic.)<br/>3 I'm not interested --<br/>4 BY MS. WILLIAMS:<br/>5 Q. -- would be top secret --<br/>6 MR. THEODOROU: -- nor I would think you<br/>7 are.<br/>8 (Talking at the same time.)<br/>9 A. No, no, no --<br/>10 BY MS. WILLIAMS:<br/>11 Q. -- and the types of information.<br/>12 A. And things that were top secret were, the<br/>13 documents were formatted a certain way, and I never<br/>14 saw anything. I mean, I was aware of their<br/>15 existence, but I myself did not ever have to handle<br/>16 anything like that, so there was no further<br/>17 explanation.<br/>18 Q. What if any explanation were you provided<br/>19 as to whether you would be given any sort of<br/>20 market -- or being given any access to any<br/>21 market-sensitive information?<br/>22 A. What type of explanation was there offered</p> |
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| <p>1 share at Treasury as a result of you having a<br/>2 security clearance?<br/>3 MR. THEODOROU: Objection.<br/>4 A. Can you restate the question?<br/>5 BY MS. WILLIAMS:<br/>6 Q. Yes.<br/>7 You said that you had some sort of<br/>8 security clearance?<br/>9 A. Correct.<br/>10 Q. And you understood that there was some<br/>11 information that you would learn in your job that<br/>12 would be top secret.<br/>13 Do you recall giving that testimony?<br/>14 A. Yes.<br/>15 Q. Was there any sort of explanation as to<br/>16 what kind of information was top secret?<br/>17 MR. THEODOROU: Objection.<br/>18 BY MS. WILLIAMS:<br/>19 Q. Without telling me top-secret information.<br/>20 MR. THEODOROU: Exactly.<br/>21 BY MS. WILLIAMS:<br/>22 Q. I said, what kind of information --</p>                                 | <p>1 to me?<br/>2 Q. Yes.<br/>3 Was there any explanation given?<br/>4 A. To me?<br/>5 Q. Yes.<br/>6 A. From whom?<br/>7 Q. From anyone who was providing you with the<br/>8 security clearance.<br/>9 MR. THEODOROU: Objection.<br/>10 A. There was not any -- no. There was no<br/>11 information given to me by those providing the<br/>12 clearance.<br/>13 BY MS. WILLIAMS:<br/>14 Q. What if any information were you given as<br/>15 to what you were allowed to do, who you were allowed<br/>16 to disseminate top-secret information to?<br/>17 A. I didn't receive any information about<br/>18 that.<br/>19 Q. Did you have any understanding as to<br/>20 what -- who you would provide top-secret information<br/>21 to?<br/>22 A. Yes, I did.</p>  |

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|---|---|
| <p>1 MR. THEODOROU: Objection.</p> <p>2 A. Only someone else who was -- had the same</p> <p>3 type of clearance that I did.</p> <p>4 BY MS. WILLIAMS:</p> <p>5 Q. Okay. We had some discussion today about</p> <p>6 embargo.</p> <p>7 How did you first come to the</p> <p>8 understanding of what an embargo is?</p> <p>9 And that's outside of the Treasury if your</p> <p>10 understanding came before you started working at</p> <p>11 Treasury.</p> <p>12 A. I don't recall when I first in my career</p> <p>13 learned what an embargo was, but it's something that</p> <p>14 when you work with the media, I mean, you just</p> <p>15 understand what that is. At some point, I had -- I</p> <p>16 don't recall if it was in college or if it was</p> <p>17 working physically with the press, but I was a member</p> <p>18 of the media, so I just -- I knew what it was.</p> <p>19 Q. What, if any, exposure to the media did</p> <p>20 you have or working for the media did you have in</p> <p>21 college?</p> <p>22 A. I worked for the Syracuse University</p> | <p>1 embargoes prior to coming to Treasury?</p> <p>2 A. I don't recall using them as -- there was</p> <p>3 no need for me to use them as a public affair --</p> <p>4 public relations person, and I don't remember what</p> <p>5 the nature of my writing was -- I don't recall using</p> <p>6 them as a reporter either, so, no.</p> <p>7 I think my first time using them in</p> <p>8 practice was at the Treasury Department.</p> <p>9 Q. And when you worked on the Hill, were you</p> <p>10 ever involved in any sort of press conferences where</p> <p>11 information was embargoed?</p> <p>12 A. No.</p> <p>13 Q. Besides the Treasury Department, do you</p> <p>14 know if other government agencies employ embargoes?</p> <p>15 A. I don't have direct knowledge, but I'm</p> <p>16 reasonably certain that they do.</p> <p>17 Q. And you haven't had any experience with</p> <p>18 embargoes from other government agencies?</p> <p>19 A. No.</p> <p>20 I mean, I was at -- I was at one</p> <p>21 government agency. Then I went back -- I was still a</p> <p>22 federal employee, so --</p> |
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| <p>1 school newspaper. I was a reporter there. I was</p> <p>2 enrolled in Newhouse school of communications as a</p> <p>3 public relations major. And I later was a reporter</p> <p>4 at the Oil Daily Company for 3 years.</p> <p>5 And then on the other side of the fence, I</p> <p>6 dealt with the media from a communications manager</p> <p>7 role at the Farm Credit Council and for Senator Pat</p> <p>8 Roberts and for the joint economic committee.</p> <p>9 Q. Did you have any exposure to embargoes</p> <p>10 while you were a reporter at Syracuse University?</p> <p>11 A. No.</p> <p>12 Q. What about at the Oil Daily?</p> <p>13 A. I don't think so, although -- I don't</p> <p>14 recall.</p> <p>15 Q. And you mentioned that you also worked for</p> <p>16 the Farm Credit Council?</p> <p>17 A. Correct.</p> <p>18 Q. Did you have any sort of exposure to</p> <p>19 embargoes at the Farm Credit Council?</p> <p>20 A. No.</p> <p>21 We didn't use embargoes there.</p> <p>22 Q. Do you know if you had any exposure to</p>                         | <p>1 Q. I mean, while you were a reporter.</p> <p>2 A. While I was a reporter.</p> <p>3 I'm sorry.</p> <p>4 Q. At any time in your career.</p> <p>5 A. No.</p> <p>6 Q. Do you know if all -- do you know if other</p> <p>7 than the Treasury embargo procedure if all other</p> <p>8 embargo procedures -- excuse me.</p> <p>9 Scratch that.</p> <p>10 Do you know if the lockdown procedure is a</p> <p>11 common procedure used with embargoes?</p> <p>12 MR. THEODOROU: Objection.</p> <p>13 A. It's a reasonable assumption that it's</p> <p>14 not -- it's not a regular operating procedure. It's</p> <p>15 fairly unusual.</p> <p>16 BY MS. WILLIAMS:</p> <p>17 Q. Why do you say that?</p> <p>18 A. Because there aren't a lot of agencies</p> <p>19 that have a Treasury -- a pressroom within the agency</p> <p>20 itself. So to have a lockdown, you do like a</p> <p>21 location pressroom to do it in. You can't just --</p> <p>22 where else would you hold the reporters.</p>  |

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| <p>1 So Treasury has a pressroom. I believe</p> <p>2 that -- I believe that State does. And I think maybe</p> <p>3 Justice does.</p> <p>4 But those are the only 3 agencies that</p> <p>5 have a pressroom within the building where something</p> <p>6 like that could occur.</p> <p>7 Q. Do you know if the Department of Labor has</p> <p>8 a pressroom?</p> <p>9 A. I don't know.</p> <p>10 Q. Before October 31, 2001, did Treasury use</p> <p>11 embargoes for the release of information besides</p> <p>12 information released at quarterly refunding</p> <p>13 conferences?</p> <p>14 A. Yes.</p> <p>15 Q. What kinds of other press conferences did</p> <p>16 Treasury use an embargo?</p> <p>17 A. Every speech was embargoed.</p> <p>18 Q. And how was the embargo set for those</p> <p>19 press conferences?</p> <p>20 MR. THEODOROU: Objection.</p> <p>21 A. Actually it's a speech.</p> <p>22 BY MS. WILLIAMS:</p>  | <p>1 for speeches that were embargoed at Treasury?</p> <p>2 A. No, it was not.</p> <p>3 MR. THEODOROU: Objection.</p> <p>4 BY MS. WILLIAMS:</p> <p>5 Q. After October 31, 2001.</p> <p>6 A. No.</p> <p>7 The lockdown was not used for anything</p> <p>8 except for the quarterly refunding.</p> <p>9 Q. Setting aside the events of October 31,</p> <p>10 2001, in your tenure at Treasury, did you ever find</p> <p>11 out if anyone ever intentionally violated the</p> <p>12 Treasury embargo?</p> <p>13 A. Not to my knowledge.</p> <p>14 Q. What about unintentional violations?</p> <p>15 MR. THEODOROU: Objection.</p> <p>16 A. There were unintentional violations.</p> <p>17 MR. THEODOROU: Just for the record: Now</p> <p>18 it's my turn to get a chance to object, so after she</p> <p>19 asks the question, you got to give me a little -- a</p> <p>20 couple seconds to get my objection --</p> <p>21 MS. WILLIAMS: Now you see what my issue</p> <p>22 was, Nick.</p>                                 |
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| <p>1 Q. Speeches.</p> <p>2 A. So if a government official at the</p> <p>3 Treasury Department is giving a speech at let's say</p> <p>4 hypothetically 2 PM, then at roughly, you know, 1:30,</p> <p>5 the text of the speech would be taken out of the</p> <p>6 pressroom with an embargo on it and given to the</p> <p>7 reporters, and we would reiterate that it's embargoed</p> <p>8 verbally as well as being on the document itself.</p> <p>9 Q. Now, you were asked on direct about</p> <p>10 exhibit 15.</p> <p>11 Do you have that exhibit?</p> <p>12 A. I do.</p> <p>13 Q. And this exhibit discusses some changes in</p> <p>14 the embargo procedure for a quarterly refunding</p> <p>15 conferences.</p> <p>16 Correct?</p> <p>17 A. Yes. Correct.</p> <p>18 Q. Do you know if the embargo procedure</p> <p>19 changed for other -- for speeches that were embargoed</p> <p>20 after October 31, 2001?</p> <p>21 A. No, it did not change.</p> <p>22 Q. Do you know if a lockdown was put in place</p> | <p>1 MR. THEODOROU: -- onto the record.</p> <p>2 MS. WILLIAMS: Could you repeat the</p> <p>3 question and answer.</p> <p>4 (The reporter read the last question, the</p> <p>5 objection, and the last answer.)</p> <p>6 BY MS. WILLIAMS:</p> <p>7 Q. How often did unintentional violations</p> <p>8 occur during your tenure at Treasury?</p> <p>9 MR. THEODOROU: Objection.</p> <p>10 A. It's my experience that every 3 to 6</p> <p>11 months, somebody would file their story early</p> <p>12 accidentally.</p> <p>13 BY MS. WILLIAMS:</p> <p>14 Q. How did these unintentional violations</p> <p>15 come to your attention?</p> <p>16 A. Usually another member of the press corps</p> <p>17 would contact me and complain.</p> <p>18 Q. Did you ever find out about these</p> <p>19 violations through any other means?</p> <p>20 A. I think maybe once or twice I noticed it</p> <p>21 myself in looking at the stories that they were filed</p> <p>22 before the embargo time, but it was only by a minute</p> |

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| <p>1 or so, but, you know, we would follow up and remind<br/>2 them of the procedure, and getting the information in<br/>3 advance was a privilege and that we could revoke that<br/>4 at any time if we wanted to.</p> <p>5 Q. Now, you said that it was usually a minute<br/>6 or 2.</p> <p>7 What was the longest period of time that<br/>8 you found out that someone had violated an embargo<br/>9 before the embargo time?</p> <p>10 A. No more than a minute or 2.</p> <p>11 Q. Did you ever take any action to prohibit<br/>12 anyone from receiving embargoed information as a<br/>13 result of their violation of the embargo?</p> <p>14 A. It was certainly threatened, but we never<br/>15 actually revoked anyone else's ability to receive<br/>16 information. We know -- we understood that for the<br/>17 most part these are people that are just doing their<br/>18 jobs and accidents happen, and it was never<br/>19 intentional.</p> <p>20 Q. What explanations did you receive from<br/>21 reporters who had filed their stories before the<br/>22 embargo time?</p> | <p>1 and members of the Treasury press corps was that, you<br/>2 know, we -- it was a 2-way street and that we gave<br/>3 them information in advance or to help them write<br/>4 their stories and have everybody have their story out<br/>5 at the same time, and so we wouldn't withhold the<br/>6 information. We wouldn't post it on the Web site<br/>7 until the embargo time that we agreed upon. It<br/>8 helped them. It helped us.</p> <p>9 And so we felt it was, you know, mutually<br/>10 beneficial. It was an understanding that was not in<br/>11 writing, but everybody was very clear on what the<br/>12 rules were and what the understanding was.</p> <p>13 Q. Did you ever receive any questions from<br/>14 any reporters about what they were or were not<br/>15 allowed to do with embargoed information while you<br/>16 were at Treasury before October 31, 2001?</p> <p>17 A. No.</p> <p>18 Q. And I think you were asked on direct about<br/>19 whether there were written policies and procedures<br/>20 regarding how refunding conferences were to be<br/>21 handled.</p> <p>22 Were there any written policies or</p> |
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| <p>1 MR. THEODOROU: Objection.</p> <p>2 A. The explanations I received was that it<br/>3 was an accident. The editors had inadvertently sent<br/>4 the story a few minutes early, it was not anything<br/>5 that was intentional.</p> <p>6 They apologized. They were reporters that<br/>7 we dealt with on a daily basis. They worked from the<br/>8 Treasury Department building and they were people<br/>9 that we knew and that, you know, we worked with<br/>10 closely, so we gave them the benefit of the doubt.</p> <p>11 BY MS. WILLIAMS:</p> <p>12 Q. Okay. Now, just to clarify, were there<br/>13 any written procedures regarding embargoes or the<br/>14 release of -- excuse me.</p> <p>15 Were there any written procedures<br/>16 regarding the embargo policy at Treasury?</p> <p>17 A. No.</p> <p>18 Q. What about unwritten policies or<br/>19 procedures?</p> <p>20 A. Yes.</p> <p>21 I mean, I think that, you know, the<br/>22 understanding between the office of public affairs</p>   | <p>1 procedures regarding how refunding conferences were<br/>2 to be handled prior to October 31, 2001?</p> <p>3 A. There were not to my knowledge.</p> <p>4 Q. What about unwritten policies or<br/>5 procedures?</p> <p>6 A. Yes.</p> <p>7 There were traditions, long-standing<br/>8 traditions of how these things had been done in the<br/>9 past. As we acknowledge in exhibit 15, we talk about<br/>10 the traditional practice of releasing the quarterly<br/>11 refunding announcement at a news conference, so there<br/>12 were traditional practices that the press corps,<br/>13 especially those who worked at Treasury, grew to<br/>14 expect to be handled a certain way, and a lot of<br/>15 times they were pretty clear, this is how it's always<br/>16 been done.</p> <p>17 Q. Were there also these traditional<br/>18 practices about how Treasury was going to release<br/>19 information regarding quarterly refunding<br/>20 conferences?</p> <p>21 A. Well, that we had a press conference,<br/>22 would be the expected manner of dissemination.</p>   |

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| <p>1 Q. And what about with regard to the press<br/>2 release itself?</p> <p>3 Any traditions as to how you were going to<br/>4 distribute the press release or make the press<br/>5 release public?</p> <p>6 MR. THEODOROU: Objection.</p> <p>7 A. So we would -- that we would hand it out<br/>8 to the media, either take it to the pressroom or wait<br/>9 and hand it out at the press conference.</p> <p>10 BY MS. WILLIAMS:</p> <p>11 Q. And what about with regard to posting on<br/>12 Treasury's Web site?</p> <p>13 Any traditional practices as to -- excuse<br/>14 me -- traditional practices that Treasury employed<br/>15 regarding the posting of the press release to its Web<br/>16 site.</p> <p>17 MR. THEODOROU: Objection.</p> <p>18 A. We traditionally posted things to the Web<br/>19 site at the time of the embargo, so I mean, they<br/>20 didn't expect things to be on the Web site until the<br/>21 time of the embargo was lifted.</p> <p>22 BY MS. WILLIAMS:</p>  | <p>1 Q. So are you familiar with the term staging<br/>2 server?</p> <p>3 A. I've heard it, but it's -- I have a very<br/>4 vague understanding of how that works.</p> <p>5 Q. Have you ever posted something on the<br/>6 staging server at Treasury?</p> <p>7 A. I think there was a time when Tony tried<br/>8 to train all of us to do this, and no one wanted to<br/>9 do it, and so we had the instructions, but it was so<br/>10 complicated, it just was not worth doing. We had<br/>11 Frances there to do it, and she was -- that was her<br/>12 job.</p> <p>13 Q. Was that before or after October 31, 2001,<br/>14 this training that Mr. Fratto tried to provide?</p> <p>15 A. I don't recall, but I think it was after.</p> <p>16 I think we had some problems with things<br/>17 not getting posted properly, and Frances was away,<br/>18 and he thought he could do that by getting everyone<br/>19 to post their own documents, and it didn't stick.</p> <p>20 Q. During your tenure at Treasury, did you<br/>21 ever learn that a reporter had provided embargoed<br/>22 information to anyone other than their editor during</p> |
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| <p>1 Q. Did you ever receive any complaints that<br/>2 Treasury had delayed in posting a press release to<br/>3 its Web site, had not put it up right at the embargo<br/>4 time?</p> <p>5 A. Occasionally, we would get calls from<br/>6 reporters outside of the building looking for a<br/>7 document that had not yet been posted, so, yes.</p> <p>8 Q. And why would that occur, that delay in<br/>9 posting?</p> <p>10 A. We either -- sometimes we had problems<br/>11 with the computer. Frances was away from her desk,<br/>12 didn't have a chance to post it. There were a<br/>13 variety of reasons why she might be delayed somehow<br/>14 in getting it posted at the time that we intended to<br/>15 have it posted.</p> <p>16 Q. Did you ever post any press releases to<br/>17 the Treasury Web site?</p> <p>18 A. I didn't know how to do it.</p> <p>19 We -- Frances was the only person outside<br/>20 of the Web team that had an understanding of how to<br/>21 post documents to the Web site.</p> <p>22 Tony might have, but I did not.</p> | <p>1 the embargo period, setting aside the events of<br/>2 October 31, 2001?</p> <p>3 A. I wasn't aware of that happening, no.</p> <p>4 Q. Were you ever made aware that a reporter<br/>5 had provided embargoed information to someone to<br/>6 receive a comment for their article before -- during<br/>7 the embargoed time?</p> <p>8 A. I wasn't aware of a specific instance, but<br/>9 I certainly knew that reporters would call me trying<br/>10 to get comment based on information, so it's not a<br/>11 surprise to me that they might try to do that with<br/>12 our information, but what can we do.</p> <p>13 Q. Was that something that was allowed under<br/>14 the embargo procedures?</p> <p>15 A. No, but we didn't have written procedures.</p> <p>16 Q. What about the unwritten procedures?</p> <p>17 Was that something that was allowed?</p> <p>18 A. No, it was not.</p> <p>19 They -- I mean -- if that were to occur<br/>20 with a reporter in the Treasury pressroom and I were<br/>21 to hear about that, I mean, I would call them and be<br/>22 upset about it, and I'd be -- I'd have reason to be,</p>             |

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| <p>1 because it would be Treasury information that they</p> <p>2 were then disseminating to a noneditor, to a</p> <p>3 nonreporter. I mean, that's the same as just going</p> <p>4 out and telling someone on the street.</p> <p>5 Q. Were you ever made aware that that</p> <p>6 happened during your tenure at Treasury, that someone</p> <p>7 had --</p> <p>8 A. I don't recall any specific instances</p> <p>9 until I heard about this one today.</p> <p>10 Q. Do you have any personal knowledge that</p> <p>11 Mr. Collins called anyone at Fannie Mae regarding the</p> <p>12 October 31, 2001, announcement?</p> <p>13 A. I did not have any prior knowledge to</p> <p>14 today of that happening.</p> <p>15 Q. Today, do you have any personal</p> <p>16 knowledge --</p> <p>17 A. Right now?</p> <p>18 Q. Yes.</p> <p>19 A. I've been told by Mr. Theodorou that he</p> <p>20 did.</p> <p>21 Q. And other than being told by</p> <p>22 Mr. Theodorou, do you have any other independent</p> | <p>1 A. Correct.</p> <p>2 Q. Is that right?</p> <p>3 Was Mr. Roger Anderson also working at</p> <p>4 Treasury while -- when you started working there?</p> <p>5 A. My recollection is that he joined Treasury</p> <p>6 after I was working there.</p> <p>7 Q. And what was his title?</p> <p>8 A. He was the deputy assistant secretary for</p> <p>9 federal finance, I believe.</p> <p>10 Q. And you believe he worked in that position</p> <p>11 while you were working --</p> <p>12 MR. THEODOROU: Objection.</p> <p>13 BY MS. WILLIAMS:</p> <p>14 Q. -- at Treasury?</p> <p>15 A. If we're referring to the same Roger</p> <p>16 Anderson and he was there when I was there, but he</p> <p>17 joined the Treasury Department after I started in</p> <p>18 August of '01, so he came after I was already there,</p> <p>19 but we worked together for the duration of my tenure</p> <p>20 there. He was still there when I left.</p> <p>21 Q. Oh, he was still there when -- this is</p> <p>22 Roger Anderson you're referring to was still at</p> |
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| <p>1 knowledge yourself?</p> <p>2 A. No.</p> <p>3 Q. Have you read any documents that suggested</p> <p>4 that Mr. Collins --</p> <p>5 A. No.</p> <p>6 Q. -- contacted someone?</p> <p>7 Have you spoken to Mr. Collins to confirm</p> <p>8 whether or not --</p> <p>9 A. No.</p> <p>10 Q. -- he's provided information to someone --</p> <p>11 Have you spoken to anyone at Fannie Mae to</p> <p>12 learn that Mr. Collins called October 31, 2001?</p> <p>13 A. No.</p> <p>14 Q. What about Mr. -- I think Mr. Theodorou</p> <p>15 asked -- also mentioned 9 additional people who might</p> <p>16 have learned information.</p> <p>17 Do you have -- do you know of any -- do</p> <p>18 you have any personal knowledge that 9 additional</p> <p>19 people learned information from Mr. Collins?</p> <p>20 A. I do not.</p> <p>21 Q. You started working at Treasury in August</p> <p>22 of 2001.</p>  | <p>1 Treasury when you left?</p> <p>2 A. (Nodding head) -- am I thinking of the</p> <p>3 right person?</p> <p>4 Glasses, big guy?</p> <p>5 MR. FUREY: Roger Kodat.</p> <p>6 MR. THEODOROU: Why don't we let her</p> <p>7 answer the question.</p> <p>8 THE COURT REPORTER: Did you say a last</p> <p>9 name?</p> <p>10 A. Need to clarify based on some information.</p> <p>11 This is a different Roger. I'm thinking of somebody</p> <p>12 else.</p> <p>13 I'm sorry.</p> <p>14 BY MS. WILLIAMS:</p> <p>15 Q. Okay. I'm asking about a Roger Anderson.</p> <p>16 Did you know someone who worked at</p> <p>17 Treasury during your tenure there named Roger</p> <p>18 Anderson?</p> <p>19 A. His name is not -- no. His name is not</p> <p>20 familiar to me right now. I don't recollect this</p> <p>21 person. I was thinking of a different man named</p> <p>22 Roger who worked at the Treasury Department.</p>  |

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| <p>1 Q. Okay. And the person that you are</p> <p>2 referring to, what was their position at Treasury?</p> <p>3 A. The deputy assistant secretary under -- he</p> <p>4 reported to -- he reported to Brian Roseboro. He was</p> <p>5 the deputy assistant secretary for I think federal</p> <p>6 finance, I think. He handled the air transportation</p> <p>7 stabilization board. Roger Kodat.</p> <p>8 I'm sorry. I apologize.</p> <p>9 It's been so long.</p> <p>10 Q. And so the Roger that you're referring to</p> <p>11 last name is Kodat?</p> <p>12 A. That's correct.</p> <p>13 THE COURT REPORTER: Kodak?</p> <p>14 THE WITNESS: No.</p> <p>15 K-O-D-A-T.</p> <p>16 BY MS. WILLIAMS:</p> <p>17 Q. I'm going to be asking questions about</p> <p>18 Roger Anderson.</p> <p>19 Do you know Roger Anderson?</p> <p>20 A. I don't, no.</p> <p>21 Q. Do you know of any Roger Anderson who</p> <p>22 worked at the Treasury Department before you started</p>   | <p>1 I vaguely recall that there was a small</p> <p>2 group of these other government like staff people</p> <p>3 that came in for the Tuesday event in the conference</p> <p>4 room. It's the second stage of the quarterly</p> <p>5 refunding process before the press conference that</p> <p>6 takes place on Tuesday, and they like to attend that</p> <p>7 particular slide show, so it's possible they may have</p> <p>8 come for the press conference as well.</p> <p>9 Q. So just to clarify: The Tuesday event,</p> <p>10 was that open to the public?</p> <p>11 A. The first 10 minutes were open to the</p> <p>12 press in order to make it a public meeting, but then</p> <p>13 the press would be excused and the meeting would</p> <p>14 continue without them.</p> <p>15 Q. And who would be continuing with this</p> <p>16 meeting that the press was not --</p> <p>17 A. The Treasury borrowing advisory committee.</p> <p>18 Q. Did you participate in the Tuesday public</p> <p>19 portion of the meeting?</p> <p>20 A. Yes, I did.</p> <p>21 Q. What about on October 30th, 2001 --</p> <p>22 MR. THEODOROU: 31st.</p> |
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| <p>1 working with the Treasury Department?</p> <p>2 A. I just -- I can't recollect who Roger</p> <p>3 Anderson is to be honest with you. I may have known</p> <p>4 him when I was there, but I don't at this -- today I</p> <p>5 don't recollect who that is.</p> <p>6 Q. Okay. So you don't know if Mr. Davis had</p> <p>7 any agreement with Mr. Anderson regarding abiding by</p> <p>8 Treasury's embargoes?</p> <p>9 A. No.</p> <p>10 I have no knowledge of that.</p> <p>11 Q. You mentioned that the Treasury refunding</p> <p>12 conferences were for the press.</p> <p>13 Do you know if any attendees from -- any</p> <p>14 people attended from other government agencies?</p> <p>15 A. It's possible.</p> <p>16 Q. Did you ever clear anyone in from any</p> <p>17 other government agency to attend the quarterly</p> <p>18 refunding conferences?</p> <p>19 A. It's possible that -- that there's a</p> <p>20 couple people from the Office of Management and</p> <p>21 Budget, OMB, and perhaps congressional budget office</p> <p>22 or the Federal Reserve.</p> | <p>1 Oh, 30th.</p> <p>2 I'm sorry.</p> <p>3 BY MS. WILLIAMS:</p> <p>4 Q. No.</p> <p>5 October 30th, 2001.</p> <p>6 Did you attend --</p> <p>7 A. I did.</p> <p>8 Q. -- the public portion of that meeting?</p> <p>9 A. I did.</p> <p>10 Q. Do you know if Mr. Davis attended that</p> <p>11 meeting?</p> <p>12 A. I don't know who Mr. Davis is, so it's my</p> <p>13 understanding he did not.</p> <p>14 Q. Do you know if there were any nonpress and</p> <p>15 non-Treasury employees present for that public</p> <p>16 portion of the October 30th meeting?</p> <p>17 A. Well, yes.</p> <p>18 The members of the borrowing advisory</p> <p>19 committee themselves. And then if -- a</p> <p>20 representative from OMB came over or CBO or the Fed</p> <p>21 came over, then they would have been there as well</p> <p>22 for the public portion.</p>   |

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| <p>1 Q. What happened after the public portion of</p> <p>2 the October 30th meeting?</p> <p>3 A. The borrowing advisory committee continued</p> <p>4 the meeting behind closed doors.</p> <p>5 Q. Where was the October 30th, 2001, meeting</p> <p>6 held?</p> <p>7 A. In the secretary's large conference room.</p> <p>8 Q. And you didn't stay for the borrowing</p> <p>9 advisory committee's closed portion of the meeting?</p> <p>10 A. Correct.</p> <p>11 I did not.</p> <p>12 Q. And was anyone who was a member of the</p> <p>13 press allowed to stay for that portion of the</p> <p>14 meeting?</p> <p>15 A. No.</p> <p>16 Q. What about members of these other offices</p> <p>17 that you mentioned, OMB, CBO?</p> <p>18 A. No.</p> <p>19 Q. And you said that -- I think you testified</p> <p>20 that the funding conference was a 3-day event.</p> <p>21 What happened on Monday of the conference?</p> <p>22 A. At 3 PM, there's some charts and some</p>   | <p>1 30th, meeting, do you know how non-Treasury</p> <p>2 employees, specifically individuals who work for</p> <p>3 other government agencies, gained clearance into the</p> <p>4 Treasury building for the Tuesday portion of the</p> <p>5 refunding conference?</p> <p>6 A. They asked permission of public affairs,</p> <p>7 and I would agree and get -- and send their names,</p> <p>8 their date of birth, and their Social Security</p> <p>9 numbers to the Secret Service office for clearance.</p> <p>10 Q. Were any other offices at Treasury besides</p> <p>11 the office of public affairs allowed to clear in</p> <p>12 other government officials to this Tuesday portion of</p> <p>13 the meeting?</p> <p>14 A. There wasn't really an issue of being</p> <p>15 allowed. I mean, I don't know they if did or not. I</p> <p>16 don't recall ever seeing anything that wasn't --</p> <p>17 hadn't gone through public affairs there other than</p> <p>18 the borrowing advisory committee themselves, so, you</p> <p>19 know, I don't know if anyone else was clearing anyone</p> <p>20 else in.</p> <p>21 Q. Did you know everyone who was at that</p> <p>22 October 30th, 2001, Tuesday portion of the meeting?</p> |
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| <p>1 other information that's released to the press, and</p> <p>2 it sort of helps them prepare for the Wednesday</p> <p>3 announcement.</p> <p>4 Q. How are these charts distributed?</p> <p>5 A. They're given to the pressroom by hand.</p> <p>6 We take them down there and give them to them. It's</p> <p>7 like the bureau of public debt brings them a calendar</p> <p>8 over and there's some charts, and we take them down</p> <p>9 there and give them -- we would take them down there</p> <p>10 and give them to the press.</p> <p>11 And that was it.</p> <p>12 Q. Did you prepare any of the charts or other</p> <p>13 information distributed for the October 29th, 2001,</p> <p>14 Monday portion of the conference?</p> <p>15 A. No.</p> <p>16 Q. Besides just taking into the pressroom,</p> <p>17 were these charts and other information distributed</p> <p>18 any other way?</p> <p>19 A. I believe they were posted on our Web site</p> <p>20 as well, I believe.</p> <p>21 Q. Okay. So that was the Monday portion.</p> <p>22 Now, going back to this Tuesday, October</p> | <p>1 A. I knew all the members of the media and I</p> <p>2 knew who the people were that came over from other</p> <p>3 agencies, because they all left with me. I made sure</p> <p>4 they were all out of the room. So at that point, I</p> <p>5 mean, whoever was left was a member of the borrowing</p> <p>6 advisory committee, and while I didn't know those</p> <p>7 people, they knew each other, and so if there was</p> <p>8 somebody who didn't fit in any of the above groups,</p> <p>9 it would kind of be obvious.</p> <p>10 It's a conference room. It's not --</p> <p>11 Q. Now, moving back to the Wednesday press</p> <p>12 conference, specifically October 31, 2001, do you</p> <p>13 know if other government -- officials from other</p> <p>14 government agencies attended that press conference?</p> <p>15 A. It's possible.</p> <p>16 I don't recall specifically that date if I</p> <p>17 cleared in the OMB folks.</p> <p>18 Q. And if officials from other government</p> <p>19 agencies did attend, would they have to be cleared</p> <p>20 into the office of public affairs?</p> <p>21 A. Yes.</p> <p>22 Q. Were any other offices allowed to clear in</p>  |

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|---|--|
| <p>1 officials from other government agencies?</p> <p>2 MR. THEODOROU: Objection.</p> <p>3 A. They should not have.</p> <p>4 BY MS. WILLIAMS:</p> <p>5 Q. When you say, they should not have, why?</p> <p>6 A. Because --</p> <p>7 MR. THEODOROU: Objection.</p> <p>8 A. -- because the press conference was an</p> <p>9 event being hosted and put on by the office of public</p> <p>10 affairs, and therefore, it was a press event that --</p> <p>11 it would not have been appropriate for another office</p> <p>12 to start inviting people to a press event, any more</p> <p>13 than it would be appropriate for us to show up at</p> <p>14 their meetings.</p> <p>15 BY MS. WILLIAMS:</p> <p>16 Q. Do you know if members of the Treasury</p> <p>17 borrowing advisory committee attended that October</p> <p>18 31, 2001, meeting?</p> <p>19 A. The 31st?</p> <p>20 Q. The 31st, yes.</p> <p>21 A. To my knowledge, they did not attend that</p> <p>22 press conference. They left Washington, went back up</p>   | <p>1 A. No, they did not.</p> <p>2 Q. Could you refer to exhibit 1. This is an</p> <p>3 memorandum of activity.</p> <p>4 A. M-hm. Yes.</p> <p>5 I'm reviewing it.</p> <p>6 Q. Okay. And on page -- if you could refer</p> <p>7 to page 2, and I'm at the first full sentence:</p> <p>8 Holahan said she announced 3 times at the press</p> <p>9 conference that the information presented by</p> <p>10 undersecretary Fisher and contained in the press</p> <p>11 release was embargoed until 11 AM.</p> <p>12 A. 10 AM.</p> <p>13 Q. 10 AM.</p> <p>14 Excuse me.</p> <p>15 Now, today during Mr. Theodorou's</p> <p>16 questioning, you said that you did not specifically</p> <p>17 recall mentioning the embargo 3 times.</p> <p>18 You only recall mentioning it 2 times; is</p> <p>19 that right?</p> <p>20 A. I'm a hundred percent certain that I</p> <p>21 announced at the beginning and at the end of the</p> <p>22 press conference. I vaguely remember making that</p> |
| Page 299  | Page 301   |
| <p>1 to New York prior to the press conference.</p> <p>2 Q. Do you know if they ever attended the</p> <p>3 Wednesday press conferences for quarterly refunding?</p> <p>4 A. I don't have any knowledge prior to the</p> <p>5 31st, but it's my understanding that they did not.</p> <p>6 Q. Individuals from other government</p> <p>7 agencies, would they have been required to abide by</p> <p>8 the embargo that was in place at the October 31,</p> <p>9 2001, conference?</p> <p>10 MR. THEODOROU: Objection.</p> <p>11 A. They would be expected to respect that,</p> <p>12 yes, and not be disseminating the information to the</p> <p>13 media or to the general public, and they were</p> <p>14 government employees.</p> <p>15 BY MS. WILLIAMS:</p> <p>16 Q. During your tenure at Treasury, did you</p> <p>17 ever hear any complaints that any official from</p> <p>18 another government agency had violated the embargo?</p> <p>19 A. No.</p> <p>20 Q. On October 31st, 2001, did any attendees</p> <p>21 ask any questions about what embargo meant after you</p> <p>22 made your announcement about the 10 AM embargo?</p> | <p>1 second announcement, but I am not a hundred percent</p> <p>2 certain.</p> <p>3 That's why today I said -- I clarified</p> <p>4 that, that this was a very -- this is an accurate</p> <p>5 depiction of what I recall. It was a week after the</p> <p>6 event, less than a week after the event, and -- but</p> <p>7 today, 6 years later, my memory is not as good.</p> <p>8 Q. Okay. So this interview was taken</p> <p>9 November 7, 2001.</p> <p>10 A. Correct.</p> <p>11 Q. Is that correct?</p> <p>12 A. That's right.</p> <p>13 Q. And at the time of this interview, the</p> <p>14 events of October 31, 2001, were more fresh in your</p> <p>15 mind.</p> <p>16 Is that a fair statement?</p> <p>17 A. Yes, it is.</p> <p>18 Q. And do you have any reason to believe that</p> <p>19 the statements in this memorandum are incorrect?</p> <p>20 A. Not at all.</p> <p>21 MR. THEODOROU: Objection.</p> <p>22 BY MS. WILLIAMS:</p>                                     |

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Washington, DC 20005

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| Page 302  | Page 304   |
|---|--|
| <p>1 Q. Did you review this memorandum today?</p> <p>2 A. Yes.</p> <p>3 Q. Did you see anything in here that you</p> <p>4 believe is incorrect?</p> <p>5 A. No, I did not.</p> <p>6 Q. Do you know -- since you started at</p> <p>7 Treasury August of 2001, do you know prior to your</p> <p>8 tenure at Treasury prior to the time you started</p> <p>9 there if an embargo time had ever been set in advance</p> <p>10 of a press conference?</p> <p>11 A. Not to my knowledge.</p> <p>12 Q. When you say, not to your knowledge, are</p> <p>13 you saying that none ever had or you just don't know</p> <p>14 if one had ever been sent in advance of a press</p> <p>15 conference?</p> <p>16 A. The latter.</p> <p>17 Q. When you worked with the Oil Daily, you</p> <p>18 were a reporter; is that right?</p> <p>19 A. Correct.</p> <p>20 Q. And the Oil Daily distributed a</p> <p>21 newsletter; is that right?</p> <p>22 A. Correct.</p> | <p>1 that said only the office of public affairs could</p> <p>2 clear people into refunding conferences?</p> <p>3 A. I'm not aware of that, no.</p> <p>4 Q. Could you refer to exhibit 5, the picture</p> <p>5 of the hallway and the diplomatic room that you drew.</p> <p>6 And I note that at the bottom there you</p> <p>7 wrote, Peter Fisher's office.</p> <p>8 Do you see that?</p> <p>9 A. Yes.</p> <p>10 Q. Did that doorway actually lead directly</p> <p>11 into Mr. Fisher's office?</p> <p>12 A. No.</p> <p>13 Q. Where did it that doorway lead?</p> <p>14 A. It led into the area that -- where his 2</p> <p>15 secretaries sat.</p> <p>16 Q. Could you draw in there where Mr. Fisher's</p> <p>17 actual office was?</p> <p>18 A. (Complying.)</p> <p>19 Q. Do you know who Mr. Fisher's secretaries</p> <p>20 were in October of 2001?</p> <p>21 A. Yes.</p> <p>22 Q. Who were they?</p>    |
| Page 303  | Page 305   |
| <p>1 Q. Did you consider yourself to be part of</p> <p>2 the press when you worked at the Oil Daily?</p> <p>3 A. Yes.</p> <p>4 Q. And one of your responsibilities was to</p> <p>5 help write blurbs for the newsletter?</p> <p>6 A. Initially.</p> <p>7 Q. Okay. And during that time initially when</p> <p>8 you were writing blurbs for this newsletter, did you</p> <p>9 consider yourself to be part of the press?</p> <p>10 A. Yes.</p> <p>11 Q. Did the Oil Daily put forth any other</p> <p>12 publication besides the newsletter?</p> <p>13 A. They had several different newsletters.</p> <p>14 Q. Did they have any sort of newspaper that</p> <p>15 they put out?</p> <p>16 A. No.</p> <p>17 Q. TV program --</p> <p>18 A. No.</p> <p>19 Q. -- that they did?</p> <p>20 Radio program?</p> <p>21 A. No.</p> <p>22 Q. Do you know of any written Treasury policy</p>   | <p>1 A. Anna Hart was his more senior secretary.</p> <p>2 She's since retired. And the other person was</p> <p>3 Diana -- I can't remember Diana's last name, but it</p> <p>4 was Anna and Diana.</p> <p>5 Q. Okay. Could you refer to exhibit 10 for</p> <p>6 me.</p> <p>7 These are the emails that you sent out on</p> <p>8 the morning of October 31, 2001; is that correct?</p> <p>9 A. Correct.</p> <p>10 Q. And I just want to go through a few of</p> <p>11 them.</p> <p>12 The first page, the email to Mr. Akin, a</p> <p>13 CNBC producer, was sent at 8:57 AM?</p> <p>14 A. Correct.</p> <p>15 Q. And that was before the press conference</p> <p>16 started?</p> <p>17 A. Correct.</p> <p>18 Q. Okay. If you could turn to the next page.</p> <p>19 The next email was sent at 9:30 AM to</p> <p>20 Mr. Fuerbringer.</p> <p>21 And that was after the press conference</p> <p>22 had ended.</p> |

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|  |  |
|--|--|
| <p style="text-align: right;">Page 306</p> <p>1 Correct?</p> <p>2 A. Correct.</p> <p>3 Q. Were you in your office at the time you</p> <p>4 sent this email?</p> <p>5 A. Yes.</p> <p>6 Q. If you could turn to the next page.</p> <p>7 This is to Mr. Ip, Wall Street Journal</p> <p>8 reporter, at 9:32 AM.</p> <p>9 This is also after the press conference</p> <p>10 had ended?</p> <p>11 A. Correct.</p> <p>12 Q. And were you in your office when you sent</p> <p>13 this email?</p> <p>14 A. Yes.</p> <p>15 Q. And then the final page.</p> <p>16 This is an email to Mr. Nichols.</p> <p>17 Mr. Nichols worked inside the Treasury</p> <p>18 Department?</p> <p>19 A. Correct.</p> <p>20 Q. And this was sent at 9:54 AM, also after</p> <p>21 the press conference ended.</p> <p>22 Right?</p>  | <p style="text-align: right;">Page 308</p> <p>1 BY MS. WILLIAMS:</p> <p>2 Q. Do you know why you would tell Mr. Nichols</p> <p>3 to send something out at 10 AM if it had already been</p> <p>4 put on the Treasury's Web site?</p> <p>5 MR. THEODOROU: Objection.</p> <p>6 A. I don't know why I would tell him that.</p> <p>7 It's a reasonable assumption that I didn't</p> <p>8 know and that I was -- I didn't find out until after</p> <p>9 10 o'clock, and at that point when I sent this email</p> <p>10 that I still believed that the embargo was in place.</p> <p>11 BY MS. WILLIAMS:</p> <p>12 Q. You stated that Ms. Anderson -- you saw</p> <p>13 Ms. Anderson handing out the press release on the</p> <p>14 hard Treasury letterhead when you were making your</p> <p>15 first announcement about the embargo during the</p> <p>16 October 31st conference.</p> <p>17 Correct?</p> <p>18 A. Correct.</p> <p>19 Q. Do you know if she was listening to your</p> <p>20 announcement?</p> <p>21 MR. THEODOROU: Objection.</p> <p>22 A. I can't answer that for her.</p> |
| <p style="text-align: right;">Page 307</p> <p>1 A. Correct.</p> <p>2 Q. Now, if you could refer to the subject</p> <p>3 line: Rob, please send to your press list at 10 AM,</p> <p>4 thanks.</p> <p>5 Do you see this?</p> <p>6 A. Yes.</p> <p>7 Q. Do you know whether if at the time you</p> <p>8 sent this email you knew that the information about</p> <p>9 the cancellation of the 30-year bond had been placed</p> <p>10 on Treasury's Web site?</p> <p>11 MR. THEODOROU: Objection.</p> <p>12 A. I don't recall if I knew at 9:54 whether</p> <p>13 it was on the Web site or not. I thought that I did,</p> <p>14 but I don't. I'm not sure now.</p> <p>15 BY MS. WILLIAMS:</p> <p>16 Q. When you say you thought that you did,</p> <p>17 what do you mean?</p> <p>18 MR. THEODOROU: Objection.</p> <p>19 A. Recalling conversations in the time line 6</p> <p>20 years later, I could have had that conversation with</p> <p>21 the reporters before 10, but now I'm thinking maybe I</p> <p>22 did not, so I just don't recall.</p> | <p style="text-align: right;">Page 309</p> <p>1 BY MS. WILLIAMS:</p> <p>2 Q. Did you ever ask her if she heard you</p> <p>3 announce the 10 AM embargo?</p> <p>4 A. I did not ask her, but I did make the</p> <p>5 assumption that she was in the room and right in</p> <p>6 front of me when I verbally said it, that she was</p> <p>7 aware of it.</p> <p>8 Q. After you found out that the press release</p> <p>9 had been posted before 10 AM, did you ask</p> <p>10 Ms. Anderson then if she'd heard you announce the 10</p> <p>11 AM embargo?</p> <p>12 MR. THEODOROU: Objection.</p> <p>13 A. Can you repeat the question?</p> <p>14 BY MS. WILLIAMS:</p> <p>15 Q. Once you realized that the press release</p> <p>16 had been put on Treasury's Web site by Mr. Anderson</p> <p>17 before 10 AM, I believe you stated you had a</p> <p>18 conversation with Ms. Anderson.</p> <p>19 A. Correct.</p> <p>20 Q. During that conversation, did you ask her</p> <p>21 whether she had heard you announce the 10 AM embargo</p> <p>22 at the conference?</p>                       |

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| Page 310  | Page 312  |
|---|---|
| <p>1 MR. THEODOROU: Objection.</p> <p>2 A. I may have asked her that, but I don't</p> <p>3 recall.</p> <p>4 BY MS. WILLIAMS:</p> <p>5 Q. Did Ms. Anderson ever tell you that she</p> <p>6 did not know about the 10 AM embargo?</p> <p>7 MR. THEODOROU: Objection.</p> <p>8 A. I don't recall.</p> <p>9 MS. WILLIAMS: I don't have any further</p> <p>10 questions at this time.</p> <p>11 MR. THEODOROU: I just have a couple.</p> <p>12</p> <p>13 FURTHER EXAMINATION BY COUNSEL FOR DEFENDANT</p> <p>14 BY MR. THEODOROU:</p> <p>15 Q. You were asked on cross-examination by</p> <p>16 Ms. Williams about your understanding of embargoes</p> <p>17 and the refunding conferences.</p> <p>18 Do you remember that?</p> <p>19 A. Yes.</p> <p>20 Q. Okay. Directing your attention to October</p> <p>21 31, 2001.</p> <p>22 You had only been at Treasury for 2</p>             | <p>1 what the embargo meant.</p> <p>2 Correct?</p> <p>3 A. Correct.</p> <p>4 Q. To the press.</p> <p>5 Correct?</p> <p>6 A. Correct.</p> <p>7 Q. Now, you were also asked questions about</p> <p>8 your memorandum of interview and the accuracy of that</p> <p>9 memorandum.</p> <p>10 Correct?</p> <p>11 A. Correct.</p> <p>12 Q. All right. You don't have any</p> <p>13 recollection talking about an embargo today for the</p> <p>14 third time that day, do you?</p> <p>15 MS. WILLIAMS: Objection.</p> <p>16 BY MR. THEODOROU:</p> <p>17 Q. Present recollection.</p> <p>18 MS. WILLIAMS: Objection.</p> <p>19 A. My present recollection is very strong for</p> <p>20 the beginning and the end of the news conference. My</p> <p>21 recollection of announcing it before the</p> <p>22 question-and-answer period is somewhat vague, but</p>   |
| Page 311  | Page 313  |
| <p>1 months.</p> <p>2 Correct?</p> <p>3 A. Correct -- 3 months.</p> <p>4 Q. And you had not received any training on</p> <p>5 what embargo meant in the context of the press</p> <p>6 conference; isn't that right?</p> <p>7 MS. WILLIAMS: Objection.</p> <p>8 A. Correct.</p> <p>9 BY MR. THEODOROU:</p> <p>10 Q. In fact, before you joined Treasury, you</p> <p>11 had no exposure to embargoes before coming to</p> <p>12 Treasury.</p> <p>13 Correct?</p> <p>14 A. No.</p> <p>15 I said that I myself had not used them,</p> <p>16 but I was exposed to them.</p> <p>17 Q. Well, I think you said -- well, all right.</p> <p>18 I can go back to the testimony, but I</p> <p>19 won't.</p> <p>20 But when you were talking about embargoes,</p> <p>21 on the day of October 31st, though, other than saying</p> <p>22 there was an embargo in place, you didn't describe</p> | <p>1 it's not -- I do recall something, yes. I do recall</p> <p>2 something.</p> <p>3 I believe it's -- once Peter Fisher</p> <p>4 concluded his remarks, he turned to me, and I stepped</p> <p>5 forward and said, now we'll have the</p> <p>6 question-and-answer period, and a reminder that it's</p> <p>7 embargoed --</p> <p>8 BY MR. THEODOROU:</p> <p>9 Q. Well, you also --</p> <p>10 A. -- until 10 o'clock.</p> <p>11 Q. All right. You also said in your</p> <p>12 statement -- you said you heard from Frances Anderson</p> <p>13 that there was a problem in formatting the press</p> <p>14 release so that it could appear on the Web site.</p> <p>15 A. Yes.</p> <p>16 Q. Correct?</p> <p>17 A. Correct.</p> <p>18 Q. Isn't it a fact though that she did not</p> <p>19 have a problem with formatting the document with the</p> <p>20 soft letterhead?</p> <p>21 MS. WILLIAMS: Objection.</p> <p>22 A. To my knowledge, she didn't format it on</p> |

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| Page 314  | Page 316   |
|---|--|
| <p>1 the soft letterhead ever.</p> <p>2 BY MR. THEODOROU:</p> <p>3 Q. Correct.</p> <p>4 That's because Tony Fratto had done it</p> <p>5 before as of 8:53 AM earlier that day.</p> <p>6 Correct?</p> <p>7 A. Correct.</p> <p>8 Q. All right. In fact, she did not have a</p> <p>9 problem formatting the document so that it could</p> <p>10 appear on the Web site after Tony Fratto had</p> <p>11 formatted; isn't that right?</p> <p>12 MS. WILLIAMS: Objection.</p> <p>13 A. To post it on the Web site, you don't need</p> <p>14 a letterhead.</p> <p>15 BY MR. THEODOROU:</p> <p>16 Q. Okay.</p> <p>17 (Pause.)</p> <p>18 MR. THEODOROU: Let me just check one more</p> <p>19 thing in my notes.</p> <p>20 (Pause.)</p> <p>21 BY MR. THEODOROU:</p> <p>22 Q. You testified earlier today that you first</p>   | <p>1 A. I'm telling you --</p> <p>2 MS. WILLIAMS: Objection, mischaracter-</p> <p>3 -- sorry.</p> <p>4 Objection, mischaracterizes testimony.</p> <p>5 A. I'm trying to be as honest and truthful as</p> <p>6 I can based on what I recall from 6 years.</p> <p>7 BY MR. THEODOROU:</p> <p>8 Q. Okay. Then I will let stand what you</p> <p>9 testified to when I asked those questions, and I</p> <p>10 won't mischaracterize your testimony.</p> <p>11 MR. THEODOROU: I have no further</p> <p>12 questions.</p> <p>13 MS. WILLIAMS: I have a couple.</p> <p>14</p> <p>15 FURTHER EXAMINATION BY COUNSEL FOR PLAINTIFF</p> <p>16 BY MS. WILLIAMS:</p> <p>17 Q. You said that you had been exposed to</p> <p>18 embargoes before coming to Treasury.</p> <p>19 How had you been exposed to embargoes?</p> <p>20 A. I worked in a newsroom at the Oil Daily,</p> <p>21 and I had an understanding of what an embargo was. I</p> <p>22 just simply did not receive information with</p>   |
| Page 315  | Page 317   |
| <p>1 learned about the premature posting on the Web site</p> <p>2 from 2 reporters.</p> <p>3 Correct?</p> <p>4 A. That was to the best of my recollection.</p> <p>5 Q. And that was before 10 AM?</p> <p>6 MS. WILLIAMS: Objection.</p> <p>7 A. I'm not sure about that now.</p> <p>8 BY MR. THEODOROU:</p> <p>9 Q. So you're not sure about what you</p> <p>10 testified about earlier today?</p> <p>11 MS. WILLIAMS: Objection.</p> <p>12 A. I'm not sure that I learned about it</p> <p>13 before 10 AM or after 10 AM. I'm simply not sure.</p> <p>14 That was 6 years ago.</p> <p>15 BY MR. THEODOROU:</p> <p>16 Q. All right. Well, earlier today, you</p> <p>17 testified -- you gave a sequence of events in which</p> <p>18 you returned back to the room and you learned, they</p> <p>19 said, that it's gone out on the Web site before 10 AM</p> <p>20 and they're going to run with the story.</p> <p>21 So are you saying that that was not true,</p> <p>22 what you told me earlier today?</p> | <p>1 embargoes on them, so I was aware what they were. I</p> <p>2 just simply didn't use them.</p> <p>3 And then when I was working as a public</p> <p>4 relations manager at the Farm Credit Council and for</p> <p>5 Senator Roberts, I didn't have occasion to use them,</p> <p>6 but I was aware of what an embargo is, and -- but</p> <p>7 being at Treasury and actually using them, that was</p> <p>8 my first time actually using them in practice.</p> <p>9 Q. And when you became aware of what an</p> <p>10 embargo was, do you know how you came to that</p> <p>11 awareness?</p> <p>12 A. No --</p> <p>13 MR. THEODOROU: Objection.</p> <p>14 A. -- I don't.</p> <p>15 BY MS. WILLIAMS:</p> <p>16 Q. Now, you testified that other information</p> <p>17 besides quarterly refunding information was embargoed</p> <p>18 at Treasury, specifically speeches?</p> <p>19 A. Correct.</p> <p>20 Q. Did you have any experience with embargoes</p> <p>21 at Treasury before October 31, 2001?</p> <p>22 MR. THEODOROU: Objection.</p> |

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| Page 318   | Page 320   |
|--|--|
| <p>1 A. Yes.</p> <p>2 BY MS. WILLIAMS:</p> <p>3 Q. Could you tell me about that, the</p> <p>4 experience you had with embargoes before October 31</p> <p>5 2001.</p> <p>6 A. Any speech that was given by a member of</p> <p>7 the office of domestic finance, any of the officials</p> <p>8 in that office, was embargoed and given to the press</p> <p>9 corps in the Treasury pressroom roughly 30 minutes</p> <p>10 before the speech began, and it was given the</p> <p>11 embargo, and the embargo time was lifted, and they</p> <p>12 were able to run their stories.</p> <p>13 So I was very familiar with the way it</p> <p>14 worked and what the procedure was.</p> <p>15 Q. Did you ever have occasion to give the</p> <p>16 press the speeches that were embargoed before October</p> <p>17 31st?</p> <p>18 MR. THEODOROU: Objection.</p> <p>19 A. Yes.</p> <p>20 BY MS. WILLIAMS:</p> <p>21 Q. And about how many occasions had you done</p> <p>22 that before October 31st, 2001, while you were at</p> | <p>1 questions.</p> <p>2</p> <p>3 FURTHER EXAMINATION BY COUNSEL FOR DEFENDANT</p> <p>4 BY MR. THEODOROU:</p> <p>5 Q. You were asked -- you were asked about</p> <p>6 embargoes on the press conferences.</p> <p>7 You said you had experience in them 2</p> <p>8 months before the October 2001 press conference.</p> <p>9 Correct?</p> <p>10 MS. WILLIAMS: Objection.</p> <p>11 A. I was asked if I had experience with</p> <p>12 embargoes prior to October 31st and I said yes.</p> <p>13 BY MR. THEODOROU:</p> <p>14 Q. At Treasury.</p> <p>15 Correct?</p> <p>16 A. Yes.</p> <p>17 Q. Okay. Could you please tell us: Did you</p> <p>18 define for the members of the press or anybody</p> <p>19 attending those press conferences what embargo</p> <p>20 meant?</p> <p>21 A. I did not.</p> <p>22 MR. THEODOROU: Thank you. No questions.</p> |
| Page 319   | Page 321   |
| <p>1 Treasury?</p> <p>2 A. At least a dozen.</p> <p>3 Q. Referring to exhibit 1, Mr. Theodorou</p> <p>4 asked you about the last paragraph -- I mean, the</p> <p>5 last sentence in the second-to-last paragraph -- I'm</p> <p>6 sorry -- I'm on the second page.</p> <p>7 It says, she heard -- she said she heard</p> <p>8 from Frances Anderson there was a problem in</p> <p>9 formatting the press release so it could appear on</p> <p>10 the Web site.</p> <p>11 Was the Web site letterhead the same</p> <p>12 letterhead as the soft letterhead?</p> <p>13 A. No.</p> <p>14 The second part of that sentence is that</p> <p>15 it could appear on the Web site. I heard from France</p> <p>16 Anderson there was a problem in formatting the press</p> <p>17 release that I asked for her to format and send back</p> <p>18 to me.</p> <p>19 Q. Do you know if she had any problems</p> <p>20 formatting it for the Web site?</p> <p>21 A. Not to my knowledge.</p> <p>22 MS. WILLIAMS: I have no further</p> | <p>1 FURTHER EXAMINATION BY COUNSEL FOR PLAINTIFF</p> <p>2 BY MS. WILLIAMS:</p> <p>3 Q. One question.</p> <p>4 Did anyone ever ask you or have any</p> <p>5 questions about what embargo meant prior to October</p> <p>6 31st, 2001?</p> <p>7 MR. THEODOROU: Objection.</p> <p>8 A. No one asked me any questions about it</p> <p>9 because they were members of the media and they</p> <p>10 understood what it meant.</p> <p>11 MR. THEODOROU: Objection.</p> <p>12 And if I could strike -- I'd move to</p> <p>13 strike that last.</p> <p>14 MS. WILLIAMS: However, it stands because</p> <p>15 we have a stipulation.</p> <p>16 MR. THEODOROU: And I'll wait until we get</p> <p>17 to trial.</p> <p>18 MS. WILLIAMS: I have no further</p> <p>19 questions.</p> <p>20 MR. THEODOROU: One last question.</p> <p>21</p> <p>22</p>                |

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Alderson Reporting Company  
1-800-FOR-DEPO

1111 14th Street, NW Suite 400

Washington, DC 20005

Elizabeth Schmutz

August 23, 2006

Washington, DC

| Page 322   | Page 324   |
|--|--|
| 1 FURTHER EXAMINATION BY COUNSEL FOR DEFENDANT           | 1 CERTIFICATE OF COURT REPORTER                          |
| 2 BY MR. THEODOROU:                                      | 2 UNITED STATES OF AMERICA )                             |
| 3 Q. You testified earlier that other members            | 3 DISTRICT OF COLUMBIA )                                 |
| 4 of other government agencies attended conferences --   | 4 I, CHERYL A. LORD, the reporter before                 |
| 5 strike that.   | 5 whom the foregoing deposition was taken, do hereby     |
| 6 Is there anywhere at the Department of the             | 6 certify that the witness whose testimony appears in    |
| 7 Treasury today a definition of what embargo meant in   | 7 the foregoing deposition was sworn by me; that the     |
| 8 the context of the quarterly refunding conference to   | 8 testimony of said witness was taken by me in machine   |
| 9 your knowledge?  | 9 shorthand and thereafter transcribed by                |
| 10 MS. WILLIAMS: Objection.                              | 10 computer-aided transcription; that said deposition is |
| 11 She doesn't work at the Treasury today.               | 11 a true record of the testimony given by said witness; |
| 12 MR. THEODOROU: I meant to her knowledge.              | 12 that I am neither counsel for, related to, nor        |
| 13 MS. WILLIAMS: Objection.                              | 13 employed by any of the parties to the action in which |
| 14 A. To my knowledge, there is a description of         | 14 this deposition was taken; and, further, that I am    |
| 15 what an embargo is laid out in the ground rules that  | 15 not a relative or employee of any attorney or counsel |
| 16 are read to the media in the lockdown prior to them   | 16 employed by the parties hereto, or financially or     |
| 17 receiving the quarterly refunding information that -- | 17 otherwise interested in the outcome of this action.   |
| 18 BY MR. THEODOROU:                                     | 18   |
| 19 Q. On the new procedures --                           | 19 CHERYL A. LORD  |
| 20 A. Yes.   | 20 Notary Public in and for                              |
| 21 Q. -- that happened after October 31st?               | 21 the District of Columbia                              |
| 22 A. That's correct.                                    | 22 My Commission expires April 30, 2011                  |
| Page 323   |  |
| 1 Q. But those did not exist obviously on                |  |
| 2 October 31.  |  |
| 3 Correct?   |  |
| 4 A. That's correct.                                     |  |
| 5 MR. THEODOROU: No further questions.                   |  |
| 6 All set. Thanks.                                       |  |
| 7 THE VIDEOGRAPHER: This concludes the                   |  |
| 8 videotape deposition of Elizabeth Holahan. Off the     |  |
| 9 record at 4:33:38 PM on August 23rd, 2006, consisting  |  |
| 10 of 4 videotapes.                                      |  |
| 11 (Whereupon, at 4:33 p.m., the taking of               |  |
| 12 the instant deposition ceased.)                       |  |
| 13   |  |
| 14   |  |
| 15   |  |
| 16 _____   |  |
| 17 Signature of the Witness                              |  |
| 18 SUBSCRIBED AND SWORN to before me this _____ day of   |  |
| 19 _____, 20 ____.                                       |  |
| 20   |  |
| 21 _____   |  |
| 22 Notary Public   |  |
| 23 My Commission Expires: _____                          |  |

82 (Pages 322 to 324)

Printed By Reuters : Unknown

Wednesday, 31 October 2001 17:37:17

15:28 31 Oct RTRS-Wall Street sees red over leak of T-bond's demise

By Daniel Sternoff

NEW YORK, Oct 31 (Reuters) - If Wall Street shed any tears over the U.S. Treasury's decision to send the 30-year bond to an early grave, they were tears of rage over a news leak that gave some dealers a head start on the biggest bond rally in history. Not only did Treasury spring a Halloween surprise by declaring it had no further use for the one-time benchmark, it had bond dealers feeling doubly duped for posting the news on its Web site well before the scheduled announcement of its fourth-quarter borrowing needs.

"There's going to be a lot of noise about that," said John Roberts, head of governments trading at Barclays Capital in New York.

"It's a fluke and it's wrong that people have information. It's like being able to trade on inside information," he said.

The Treasury was due to make its quarterly refunding announcement at 10:00 a.m. (1500 GMT) on Wednesday.

But the news appeared on the Treasury's Web site around 15 to 20 minutes before the scheduled refunding announcement, leaving many players scrambling to understand why the soon-to-be scarce long bond started flying higher.

And while the Treasury market has long mulled the eventual demise of the 30-year bond, few were expecting the government would retire the long bond at a time when Washington is raising funds to fight a war and a budding recession.

"It came out of nowhere," said Steve Saslow, proprietary bond trader at HSBC Securities. "The rumors started going around and the bonds started going crazy, so obviously somebody had a lead of a few minutes."

That lead will probably earn some lucky traders a fat year-end bonus for an early jump on the long bond's unprecedented rally of more than 5-1/2 points and largest decline in yields since the 1987 stock market crash.

Peter Fisher, Treasury's undersecretary for domestic finance, insisted the government was not manipulating the market in the world's most secure assets.

"We cannot run this business if people think we are trying to time the market or outsmart the market," Fisher said in an interview with cable television network CNBC.

But those remarks rang hollow for traders who at best saw ham-handed handling of the announcement, and at worst suspected insider trading by market players who sit on a Treasury Borrowing Advisory Committee.

Barclays' Roberts recalled a similar flap earlier this month, when the Treasury decided to flood the market with more 10-year notes to ease a liquidity logjam caused by failed trades after the Sept. 11 attacks on Washington and New York.

"When they did the reopening of the 10-year, there was advance information on the Street. There's advance information here, and so there are a number of people on the Street who are pretty upset about it," Roberts said.

((U.S. Financial Markets Desk, 646 223 6323))

For related news, double click on one of the following codes:

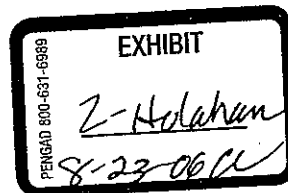
[MNI] [E] [U] [M] [T] [D] [NAT] [RNP] [DNP] [PTD] [CRD] [US] [DBT] [GVD] [WASH] [FIN] [BNK] [DRV] [AGN] [MUN] [MTG] [LEN]  
[RTRS]  
[US30YT=RR]c

For related price quotes, double click on one of the following codes:

<US30YT=RR>

Wednesday, 31 October 2001 15:28:21

RTRS [nN31550341]



Nothern - 0386

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NEWS

OFFICE OF PUBLIC AFFAIRS • 1500 PENNSYLVANIA AVENUE, N.W. • WASHINGTON, D.C. • 20220 • (202) 622-2960

For Immediate Release  
October 30, 2001

Contact: Betsy Holahan  
202-622-2960

### Treasury Department To Hold Quarterly Refunding News Conference

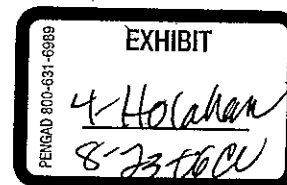
Treasury Under Secretary for Domestic Finance Peter R. Fisher will announce the U.S. government's quarterly refunding needs at a news conference at 9:00 a.m. EDT on Wednesday, October 31, 2001 in the Treasury Department's Diplomatic Reception Room (Room 3311), 1500 Pennsylvania Avenue, NW, Washington, DC.

Under Secretary Fisher will take questions following the announcement. The event will have a 10:00 a.m. news embargo.

The room will be available for pre-set at 8:00 a.m. on Wednesday. Media without Treasury or White House press credentials planning to attend should contact Frances Anderson at Treasury's Office of Public Affairs at (202) 622-2960 by 8:00 a.m. on Wednesday with the following information: name, social security number and date of birth. This information may also be faxed to (202) 622-1999.

-30-

PO-746



For press releases, speeches, public schedules and official biographies, call our 24-hour fax line at (202) 622-2040

SECNOTH00103448

**Holahan, Betsy**

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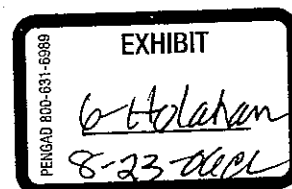
**From:** Holahan, Betsy  
**Sent:** Wednesday, October 31, 2001 8:41 AM  
**To:** Anderson, Frances  
**Subject:** FW: FINAL VERSION

please format and e-mail a formatted copy back to me

-----Original Message-----

**From:** Bitsberger, Timothy  
**Sent:** Wednesday, October 31, 2001 8:39 AM  
**To:** Fisher, Peter; Holahan, Betsy; Malvey, Paul; Gross, Jared  
**Subject:** FINAL VERSION

NOVQ - FINAL.doc



**UNDER SECRETARY OF THE TREASURY FOR DOMESTIC FINANCE  
PETER R. FISHER  
REMARKS AT THE NOVEMBER 2001 QUARTERLY REFUNDING**

As a consequence of the further weakening of the economy and the increased federal outlays that have occurred since the attacks of September 11<sup>th</sup>, the near-term financing requirements of the federal government are larger than we anticipated just three months ago at our last quarterly refunding in August. In this setting, the management of the Treasury's marketable debt needs to anticipate the possibility of a unified budget deficit for this fiscal year and, perhaps, the following fiscal year as well. However, even if this happens, we expect that the federal government will return to surpluses in the coming years.

With this outlook in mind, today we are announcing:

- The terms of the November refunding, including a new 5-year note in the amount of \$16 billion and a reopening of the 5 percent 10-year note issued in August 2001 in the amount of \$7 billion; and that
- We are adjusting the debt buyback program as follows:
  - We will continue to conduct buybacks for the remainder of this calendar year;
  - We will make no buybacks in January 2002; and
  - Beginning in February 2002, we will announce at our quarterly refundings the amount and timing of any buyback operations for the subsequent three-month period; and finally that
- We are suspending issuance of the 30-year bond: there will be no auction of 30-year securities in February 2002 and we plan no further auctions of either 30-year nominal or inflation-adjusted bonds.

### **Recent Changes in the Fiscal Outlook**

Debt issuance over the past several years has been structured in an environment of large budget surpluses. However, the fiscal environment has changed substantially over the past few months due to the slowdown in economic activity and to the federal government's prompt response to the attacks of September 11<sup>th</sup>. The Treasury's debt management has adjusted already, and will continue to adjust, as we accommodate the federal government's increased financing needs during this period. But our expectation is that these heightened financing requirements will prove short-lived, as the economy eventually strengthens, and as the pressures for increased federal outlays stemming from the attacks of September 11<sup>th</sup> subside.

### **Suspension of Thirty-Year Borrowing**

The debt management strategy of the Treasury has been to strive to be regular and predictable in the issuance of debt while minimizing borrowing costs over many years and interest rate cycles. The Treasury does not try to outsmart the market at any one moment or to be a "market timer" with respect to any particular shape of the yield curve. However, debt management necessarily involves judgments about the size and duration of the federal government's borrowing needs. This compels us to focus on likely borrowing needs over the coming years but we also take into account the likely consequences of unlikely outcomes.

We do not need the 30-year bond to meet the government's current financing needs, nor those that we expect to face in coming years. Looking beyond the next few years, as I already observed, we believe that the likely outcome is that the federal government's fiscal position will improve after the temporary setback that we are now experiencing.

There are two less likely outcomes that we have also considered.

First, it is possible that the federal government will return to significant and sustained budget surpluses even more quickly than we now expect. In this event, maintaining current issuance levels of 30-year bonds would be unnecessary and expensive to taxpayers.

Second, we face the possibility that sustained surpluses do not materialize as promptly as we now expect. If later in this decade it turns out that 30-year borrowing is necessary to meet the government's financing needs, it is still likely that our decision to suspend 30-year borrowing at this time will have saved the taxpayers money. In addition, the reintroduction of the 30-year bond, at some point in the future, if necessary, would likely be costless to the Treasury.

The 30-year bond no longer maintains a position of significance in the financial markets. Its role and its liquidity have been significantly impaired by the substantial reduction of issuance that has occurred over the last decade. But the markets have

functioned smoothly during this period while both activity and attention have shifted to our 10-year offerings.

As long as we have borrowing requirements to finance, the Treasury will seek to maintain the liquidity and depth of the instruments we issue as a means of achieving the lowest cost of borrowing for the taxpayer over time. At this time, the best means for us to do this is to suspend issuance of the 30-year bond and concentrate our borrowing needs on our other instruments.

#### **Adjustment of the buyback program**

In response to the altered budget outlook for this fiscal year, we are also making adjustments in our buyback program. Beginning in February 2002, our decisions on whether to conduct buyback operations, and on the amount and timing of any purchases, will be made at the time of our regular quarterly refunding announcements and will be based upon three factors:

- first, our projections of the federal government's annual, unified surplus or deficit position;
- second, our projections of that three-month period's cash position; and,
- third, our analysis of how best to minimize borrowing costs over time.

In making the transition to these new procedures, our buyback operations for the remainder of this calendar year will continue in line with our prior announcements. In August we stated that we would be purchasing approximately \$9 billion during the fourth calendar quarter. So far we have purchased \$2.5 billion and the remaining \$6.5 billion will be purchased in November and December. Due to the holidays in November and December, however, the timing of our specific announcements will be altered from recent practice. We will make announcements of the specific amounts and maturities of our purchases on November 14 and 28 and on December 12 and 19 for operations to take place on the following day.

We will make no buyback purchases in January 2002. Beginning with our February 2002 quarterly refunding, we will include the details of any buyback operations to be conducted in the subsequent three months in our regular refunding announcements.

In light of the information that we now have, market participants should understand that there are likely to be periods in which we do not conduct buyback operations and that there are likely to be other periods in which we do conduct such operations, consistent with the ebb and flow of our cyclical cash position. But the presence or absence of these operations will be clearly announced, in advance, as part of our refunding process.

### **Terms of the November Refunding**

I will now turn to the terms of the November Refunding. We are offering \$23 billion of notes to refund approximately \$21.6 billion of privately held notes and bonds maturing on November 15, raising approximately \$1.4 billion. The securities are:

1. A new 5-year note in the amount of \$16 billion, maturing November 15, 2006.
2. A re-opening of the 5% 10-year note issued in August 2001 and previously reopened in October 2001, maturing August 15, 2011, in the amount of \$7 billion.

These securities will be auctioned on a yield basis at 1:00 p.m. eastern time on Tuesday, November 6, and Wednesday, November 7, respectively. The balance of our financing requirements will be met through 2-year note and bill offerings.

As announced on Monday, we estimate that we will have a \$35 billion cash balance on December 31 and a \$30 billion cash balance on March 31.

Our next quarterly refunding announcement will take place on Wednesday, January 31, 2002.

**Holahan, Betsy**

---

**From:** Holahan, Betsy  
**Sent:** Wednesday, October 31, 2001 8:57 AM  
**To:** Chip Aiken (E-mail)  
**Subject:** EMBARGOED UNTIL 10 AM  
**Importance:** High

*CNBC producer*

NOVO - FINAL + .doc

Again, the # is 202-622-1703 - leave reporters name and # with Anna Hart



SECNOTH00103779

**Holahan, Betsy**

---

**From:** Holahan, Betsy  
**Sent:** Wednesday, October 31, 2001 9:30 AM  
**To:** Jonathan Fuerbringer (E-mail)  
**Subject:** EMBARGOED UNTIL 10 AM TODAY!  
**Importance:** High

*NY Times reporter*

NOVQ - FINAL + .doc

Holahan, Betsy

---

**From:** Holahan, Betsy  
**Sent:** Wednesday, October 31, 2001 9:32 AM  
**To:** Greg Ip (E-mail)  
**Subject:** EMBARGOED UNTIL 10 AM TODAY!  
**Importance:** High

*WSJ reporter*

NOVO - FINAL + .doc

Holahan, Betsy

---

**From:** Holahan, Betsy  
**Sent:** Wednesday, October 31, 2001 9:54 AM  
**To:** Nichols, Robert  
**Subject:** Rob - please send to your press list at 10 am - thanks!  
**Importance:** High

DAS,  
Public Affairs

NOVO - FINAL+.doc

US TREASURY SAYS DISCONTINUING SALES OF REGULAR, INDEXED  
30-YEAR BONDS

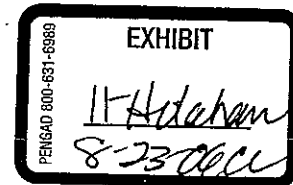
MORE

Rtr 09:57 10-31-01

:SUBJECT: SPRC MU IR USPO USA

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Received by NewsEDGE/LAN: 10/31/2001 9:52 AM



SECNOTH00103134

## **Exhibit F**

### **Deposition of Tony Fratto and Cited Exhibit (August 30, 2006)**

Anthony Fratto

Washington, DC

August 30, 2006

Page 1

1 UNITED STATES DISTRICT COURT  
2 FOR THE DISTRICT OF MASSACHUSETTS  
3  
4 -----X  
5 UNITED STATES SECURITIES :  
6 AND EXCHANGE COMMISSION, :  
7 Plaintiff, :  
8 V. : Case No. 05-10983  
9 STEVEN E. NOTHERN, :  
10 Defendant. :  
11 -----X

11 Washington, D.C.

12 AUGUST 30, 2006

13 Videotaped deposition of ANTHONY  
14 FRATTO, a witness herein, called for examination by  
15 counsel for Defendant, in the above-entitled  
16 matter, pursuant to notice, the witness being sworn  
17 by Raymond Heer, a Notary Public in and for the  
18 District of Columbia, taken at the offices of Foley  
19 Hoag, Washington, D.C. on August 30, 2006, at 10:35  
20 a.m. and the proceedings being taken down by  
21 stenotype by Desirae S. Jura, RPR, and transcribed  
22 under her direction.

Anthony Fratto

August 30, 2006

Washington, DC

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| 4 Commission:   |  | 4 Examination by Ms. Williams      | 243  |
| 5 ERICA Y. WILLIAMS, ESQUIRE                          |  | 5 Examination by Mr. Theodorou     | 269  |
| 6 JOHN J. ROSSETTI, JR., ESQUIRE                      |  | 6                                  |      |
| 7 United States Securities and Exchange               |  | 7 EXHIBITS                         |      |
| 8 Commission  |  | 8 FRATTO                           |      |
| 9 Mail Stop 8549-D                                    |  | 9 EXHIBIT NO. DESCRIPTION PAGE     |      |
| 10 100 F Street N.E.                                  |  | 10 1 Memorandum of Activity        | 66   |
| 11 Washington, D.C. 20549                             |  | 11 2 Memorandum of Activity        | 68   |
| 12 (202) 551-4450                                     |  | 12 3 The Washington Post article   |      |
| 13  |  | 13 Dated 11/06/2001                | 79   |
| 14 On behalf of United States Department of Treasury: |  | 14 4 Letter from John W. Vardaman  |      |
| 15 CHRISTIAN FUREY, ESQUIRE                           |  | 15 Dated March 4, 2002             | 90   |
| 16 THOMAS M. McGIVERN, ESQUIRE                        |  | 16 5 Reuters article dated         |      |
| 17 United States Department of the Treasury           |  | 17 October 31, 2001                | 115  |
| 18 1500 Pennsylvania Avenue, N.W.                     |  | 18 6 Bloomberg article dated       |      |
| 19 Washington, D.C. 20220                             |  | 19 Oct 31 2001                     | 119  |
| 20 (202) 622-5441                                     |  | 20 7 Department of the Treasury    |      |
| 21  |  | 21 Treasury News For Immediate     |      |
| 22  |  | 22 Release dated October 30, 2001  | 150  |
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| 2 APPEARANCES(continued)                              |  | 2 FRATTO                           |      |
| 3   |  | 3 EXHIBIT NO. DESCRIPTION PAGE     |      |
| 4 On behalf of the Defendant:                         |  | 4 8 Hand-drawn diagram             | 163  |
| 5 NICHOLAS THEODOROU, ESQUIRE                         |  | 5 9 The Wall Street Journal        |      |
| 6 Foley Hoag  |  | 6 Article dated November 15, 2001  | 177  |
| 7 Seaport World Trade Center West                     |  | 7 10 E-mail from Betsy Holahan     |      |
| 8 155 Seaport Boulevard                               |  | 8 Dated October 31, 2001 with      |      |
| 9 Boston, MA 02210                                    |  | 9 Attachment                       | 195  |
| 10 (617) 832-1000                                     |  | 10 11 E-mail from Betsy Holahan    |      |
| 11  |  | 11 Dated October 31, 2001          | 198  |
| 12  |  | 12 12 Department of the Treasury   |      |
| 13  |  | 13 Office of Public Affairs        |      |
| 14  |  | 14 Under Secretary of the Treasury |      |
| 15  |  | 15 For Domestic Finance            |      |
| 16  |  | 16 Remarks at the November 2001    |      |
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| 20  |  | 20 14 E-mail from Betsy Holahan    |      |
| 21  |  | 21 Dated October 31, 2001 with     |      |
| 22  |  | 22 Attachment                      | 213  |

2 (Pages 2 to 5)

Anthony Fratto

August 30, 2006

Washington, DC

| Page 6  | Page 8   |
|---|--|
| <p>1 EXHIBITS - Continued</p> <p>2 FRATTO</p> <p>3 EXHIBIT NO. DESCRIPTION PAGE</p> <p>4 15 Treasury News from the Office of</p> <p>5 Public Affairs, for Immediate</p> <p>6 Release, October 31, 2001</p> <p>7 Under Secretary of the Treasury</p> <p>8 For Domestic Financing Peter</p> <p>9 Fisher Remarks at the November</p> <p>10 2001 Quarterly Refunding 227</p> <p>11 16 Treasury News from the Office of</p> <p>12 Public Affairs, for Immediate</p> <p>13 Release dated October 31, 2001,</p> <p>14 Statement from the Office of</p> <p>15 Public Affairs Regarding the</p> <p>16 Quarterly Refunding Announcement 229</p> <p>17 17 Typed document, From the Office</p> <p>18 Of Public Affairs, Treasury</p> <p>19 Department Sets Procedures for</p> <p>20 Quarterly Refunding Announcements 235</p> <p>21</p> <p>22</p>   | <p>1 Northwest, Suite 400, Washington, D.C. 20005.</p> <p>2 This videotaped deposition commenced at</p> <p>3 10:38:02.</p> <p>4 MR. THEODOROU: Ask for stipulations that</p> <p>5 will be the same stipulations that we have used in</p> <p>6 prior depositions. Correct?</p> <p>7 MS. WILLIAMS: Yes.</p> <p>8 MR. THEODOROU: So it is hereby stipulated</p> <p>9 by and between counsel that all objections except</p> <p>10 as to matter of form, including motions to strike,</p> <p>11 are reserved until the time of trial.</p> <p>12 WHEREUPON,</p> <p>13 ANTHONY FRATTO</p> <p>14 Called as a witness, and having been duly sworn,</p> <p>15 was examined and testified as follows:</p> <p>16 EXAMINATION</p> <p>17 BY MR. THEODOROU:</p> <p>18 Q. Good morning, Mr. Fratto.</p> <p>19 A. Good morning.</p> <p>20 Q. My name is Nicholas Theodorou. As you know,</p> <p>21 I represent the plaintiff in this case, Steven</p> <p>22 Nothem. I'm going --</p>  |
| Page 7  | Page 9   |
| <p>1 THE VIDEOGRAPHER: This is in the United</p> <p>2 States District Court for the District of</p> <p>3 Massachusetts. The plaintiff is the United States</p> <p>4 Securities and Exchange Commission. The defendant</p> <p>5 is Steven E. Nothem. Today's date is August 30,</p> <p>6 2006. This is civil action number 05-10983.</p> <p>7 The witness is Tony Fratto. The location of</p> <p>8 the deposition is 1875 K Street Northwest,</p> <p>9 Washington, D.C.</p> <p>10 Appearing on behalf of the plaintiff are</p> <p>11 Erica Y. Williams and John J Rossetti, Jr., of the</p> <p>12 Securities and Exchange Commission. Calling the</p> <p>13 deposition on behalf of the defendant is Nicholas</p> <p>14 Theodorou of Foley Hoag. Appearing on behalf of</p> <p>15 the witness and the Department of the Treasury, is</p> <p>16 Thomas M. McGivern and Christian Furey of the</p> <p>17 Department of the Treasury.</p> <p>18 The officer before whom this videotaped</p> <p>19 deposition is taken is Desirae Jura; the officer</p> <p>20 before whom this witness is sworn and the video</p> <p>21 camera operator is Raymond Heer, representing</p> <p>22 Alderson Reporting Company, 1111 14th Street</p> | <p>1 A. Defendant.</p> <p>2 Q. Excuse me, defendant, soon to be the</p> <p>3 plaintiff, against the Securities and Exchange</p> <p>4 Commission when the case gets dismissed. But</p> <p>5 nevertheless.</p> <p>6 MS. WILLIAMS: Objection.</p> <p>7 BY MR. THEODOROU:</p> <p>8 Q. I represent Mr. Nothem, the defendant in</p> <p>9 this case. And I'm glad you were listening to what</p> <p>10 I had to say.</p> <p>11 I'm going to be asking you several questions</p> <p>12 this morning. If you don't understand any</p> <p>13 questions -- and I'm not trying to trick you into</p> <p>14 any answers or anything like that. If the question</p> <p>15 has to be clarified, you ask me to clarify the</p> <p>16 question.</p> <p>17 During the course of the deposition, some</p> <p>18 objections will be raised. All right? That is not</p> <p>19 unusual in a deposition; there are lawyer</p> <p>20 objections that are going to be resolved by the</p> <p>21 court. Unless you are directed not to answer the</p> <p>22 question, you still must answer the question, and</p> |

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| <p>1 the objections go in the record and we raise them</p> <p>2 with the judge if and when it becomes appropriate</p> <p>3 to raise any of those objections with the judge</p> <p>4 regarding your testimony.</p> <p>5 I'm going to ask you this morning a series</p> <p>6 of questions, as I said, and I ask that you answer</p> <p>7 them completely and truthfully.</p> <p>8 Would you please state your full name for</p> <p>9 the record.</p> <p>10 <b>A. Salvatore Antonio Fratto.</b></p> <p>11 Q. Mr. Fratto, did you do anything to prepare</p> <p>12 for this deposition?</p> <p>13 <b>A. Only spent some time with the SEC attorneys</b></p> <p>14 <b>yesterday afternoon.</b></p> <p>15 Q. When you say the SEC attorneys, do you mean</p> <p>16 Ms. Williams and Mr. Rossetti?</p> <p>17 <b>A. I do.</b></p> <p>18 Q. How long did you meet with them?</p> <p>19 <b>A. Approximately, three hours.</b></p> <p>20 Q. Where did you meet with them?</p> <p>21 <b>A. In my office.</b></p> <p>22 Q. Was anyone else present?</p>   | <p>1 <b>A. And a Wall Street Journal news article.</b></p> <p>2 Q. What did the SEC attorneys tell you about</p> <p>3 this case?</p> <p>4 <b>A. No more that they were -- that they were</b></p> <p>5 <b>prosecuting the case on having to do with this</b></p> <p>6 <b>northern -- or Nothern. And that's -- I can't</b></p> <p>7 <b>think of anything specific. When you say about the</b></p> <p>8 <b>case, I don't -- asked me lots of questions</b></p> <p>9 <b>about --</b></p> <p>10 Q. About the incidents of October 31st and the</p> <p>11 documents?</p> <p>12 <b>A. Exactly.</b></p> <p>13 Q. Did they tell you what their allegations</p> <p>14 against Mr. Nothern are?</p> <p>15 <b>A. They said that the case involved insider</b></p> <p>16 <b>trading. I don't know if that was specific to Mr.</b></p> <p>17 <b>Nothern or not.</b></p> <p>18 Q. Did they comment on whether or not he</p> <p>19 actually was liable for insider trading?</p> <p>20 <b>A. No.</b></p> <p>21 Q. Did they discuss with you the questions that</p> <p>22 I would be asking you this morning?</p> |
| Page 11  | Page 13  |
| <p>1 <b>A. No. I'm sorry. Treasury attorneys Tom</b></p> <p>2 <b>McGivern and Christian Furey also. Mr. McGivern</b></p> <p>3 <b>for part of it and Christian Furey for all of it.</b></p> <p>4 Q. Did you review any documents during the</p> <p>5 course of your meeting?</p> <p>6 <b>A. Yes. There were a few.</b></p> <p>7 Q. What documents did you review?</p> <p>8 <b>A. Some of the press releases that were issued</b></p> <p>9 <b>on the day of the announcement. I think two</b></p> <p>10 <b>e-mails relating to this. A report of a -- a</b></p> <p>11 <b>report of an interview with me that I believe</b></p> <p>12 <b>was -- actually, I'm not even certain of the</b></p> <p>13 <b>source. I can't recall the source of the document.</b></p> <p>14 <b>It might have been the OIT.</b></p> <p>15 Q. A memorandum of their interview with you?</p> <p>16 <b>A. That is what it was. Yeah.</b></p> <p>17 Q. Did they show you one or two of the</p> <p>18 memoranda? Do you remember seeing one or two?</p> <p>19 <b>A. I just recall seeing one.</b></p> <p>20 Q. What --</p> <p>21 <b>A. And --</b></p> <p>22 Q. I'm sorry.</p> | <p>1 <b>A. In nature. Yeah.</b></p> <p>2 Q. What did they say?</p> <p>3 <b>A. They said that you would ask a number of</b></p> <p>4 <b>questions about the events and how they occurred</b></p> <p>5 <b>and that you were likely to ask them in various</b></p> <p>6 <b>ways and numerous times.</b></p> <p>7 Q. And did they say anything else about the way</p> <p>8 I would approach the deposition this morning?</p> <p>9 <b>A. No. They said that you were a good</b></p> <p>10 <b>attorney, and you are going to ask lots of</b></p> <p>11 <b>questions.</b></p> <p>12 Q. And you understand you have to tell the</p> <p>13 truth.</p> <p>14 THE WITNESS: Sorry, guys.</p> <p>15 MR. THEODOROU: I didn't hear an objection</p> <p>16 from Ms. Williams on that.</p> <p>17 BY MR. THEODOROU:</p> <p>18 Q. Did Mr. McGivern discuss anything about the</p> <p>19 case with you?</p> <p>20 <b>A. No.</b></p> <p>21 Q. Did he discuss anything with you before you</p> <p>22 met with the SEC attorneys?</p>   |

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| <p>1 A. No. Just dealt with scheduling.</p> <p>2 Q. Did Mr. Furey discuss the case with you?</p> <p>3 A. No.</p> <p>4 Q. Did Mr. McGivern say anything at the meeting</p> <p>5 yesterday?</p> <p>6 A. No. Not that I recall. No.</p> <p>7 Q. Did Mr. Furey?</p> <p>8 A. No.</p> <p>9 Q. Did you take any notes during the meeting?</p> <p>10 A. No.</p> <p>11 Q. Did the attorneys for the SEC take notes?</p> <p>12 A. Yes.</p> <p>13 Q. And how about the attorneys for the</p> <p>14 Treasury?</p> <p>15 A. I honestly don't recall.</p> <p>16 Q. Have you testified before under oath in any</p> <p>17 context?</p> <p>18 A. No.</p> <p>19 Q. So you haven't testified in your capacity as</p> <p>20 an Assistant Secretary to Congress?</p> <p>21 A. I'm sorry. Yeah, to Congress I have, at my</p> <p>22 confirmation hearing. Yeah.</p>  | <p>1 Q. Okay. Before yesterday, had you met with</p> <p>2 any attorneys from the SEC?</p> <p>3 A. We had met with both attorneys a number of</p> <p>4 months ago, when we were -- I think we were looking</p> <p>5 at scheduling this testimony. I can't recall what</p> <p>6 the date was.</p> <p>7 Q. And when you say attorneys, do you mean</p> <p>8 Ms. Williams and Mr. Rossetti?</p> <p>9 A. Mr. Rossetti. Yes.</p> <p>10 Q. And you met with them some months ago?</p> <p>11 A. Yeah. I honestly don't recall the date.</p> <p>12 Q. Do you recall approximately how many months</p> <p>13 ago?</p> <p>14 A. It had to be late spring or early summer, I</p> <p>15 guess.</p> <p>16 Q. Where was the meeting?</p> <p>17 A. In my office.</p> <p>18 Q. And how long was the meeting?</p> <p>19 A. It might have been an hour. I don't</p> <p>20 remember.</p> <p>21 Q. Was anyone else present at the meeting?</p> <p>22 A. I think Tom McGivern and Chris Furey were</p>   |
| Page 15   | Page 17  |
| <p>1 Q. Have you ever testified at a deposition</p> <p>2 before?</p> <p>3 A. No.</p> <p>4 Q. Other than your confirmation hearing, have</p> <p>5 you ever testified under oath before?</p> <p>6 A. Not that I recall. No. I mean, does</p> <p>7 traffic court count? I don't think I was sworn in</p> <p>8 on traffic court.</p> <p>9 Q. What was the traffic court allegation?</p> <p>10 A. I think I was fighting a speeding ticket.</p> <p>11 Q. I think we can all relate to that.</p> <p>12 A. Yeah.</p> <p>13 Q. Did the policeman show up that day?</p> <p>14 A. Yeah, he did. And I won.</p> <p>15 Q. That's even better.</p> <p>16 In your meeting yesterday, did the SEC</p> <p>17 attorneys tell you what I was going to try to</p> <p>18 accomplish through your testimony?</p> <p>19 A. No.</p> <p>20 Q. Did they tell you what I was going to try to</p> <p>21 establish through your testimony?</p> <p>22 A. No.</p> | <p>1 there as well.</p> <p>2 Q. What was discussed at that meeting?</p> <p>3 A. Just some more details on -- or some of the</p> <p>4 same questions we went over yesterday, the very</p> <p>5 same questions. And explaining to me that there</p> <p>6 was a -- you know, that there was an additional</p> <p>7 case and that I may be called on to be deposed.</p> <p>8 And I don't recall it being much more in depth than</p> <p>9 that.</p> <p>10 Q. Do you recall any documents at that meeting?</p> <p>11 A. I don't remember. I don't think so, but I</p> <p>12 don't remember.</p> <p>13 Q. What is your current position at Treasury,</p> <p>14 Mr. Fratto?</p> <p>15 A. Assistant Secretary of the Treasury for</p> <p>16 Public Affairs.</p> <p>17 Q. And how long have you been in that position?</p> <p>18 A. I was named the acting assistant secretary</p> <p>19 in May of 2005. I was confirmed by the Senate in</p> <p>20 December of 2005.</p> <p>21 Q. And what are your duties and</p> <p>22 responsibilities?</p> |

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| <p>1 A. I oversee the external communications for<br/>2 the Department of the Treasury. It includes<br/>3 working with the Secretary of the Treasury on his<br/>4 communications through the media, and overseeing<br/>5 the staff of public affairs spokesmen and other<br/>6 administrative staff. And, you know, so it<br/>7 includes all of the tools we use to try to<br/>8 communicate messages to the public and through the<br/>9 news media.</p> <p>10 Q. And how many people do you supervise in your<br/>11 department?</p> <p>12 A. When we're fully staffed, 18.</p> <p>13 Q. How long have you been at Treasury?</p> <p>14 A. About five and a half years. Since March of<br/>15 2001.</p> <p>16 Q. Before you became assistant secretary for<br/>17 public affairs, what was your prior position?</p> <p>18 A. I was the Deputy Assistant Secretary for<br/>19 Public Affairs.</p> <p>20 Q. And who was the assistant secretary?</p> <p>21 A. Rob Nichols.</p> <p>22 Q. Is Mr. Nichols still at the Treasury</p>  | <p>1 supervisor for the administrative staff and what we<br/>2 call the lower press office. So, not<br/>3 administrative staff reporting to the deputy<br/>4 assistant secretary or the assistant secretary.</p> <p>5 Q. And when you say that you supervised other<br/>6 public affairs spokespersons, how many<br/>7 spokespersons were there that you supervised?</p> <p>8 A. Three.</p> <p>9 Q. Who were they?</p> <p>10 A. Tara Bradshaw who handled tax policy, Tasia<br/>11 Skalinos who handled enforcement issues, and Betsy<br/>12 Holahan who handled domestic finance issues.</p> <p>13 Q. You reported to whom as the director of the<br/>14 Office of Public Affairs?</p> <p>15 A. To the assistant secretary of public<br/>16 affairs.</p> <p>17 Q. And who --</p> <p>18 A. Michele Davis.</p> <p>19 Q. Is Ms. Davis still at the Treasury<br/>20 Department?</p> <p>21 A. No.</p> <p>22 Q. Where is Ms. Davis?</p>  |
| Page 19  | Page 21   |
| <p>1 Department?</p> <p>2 A. No.</p> <p>3 Q. And what were your duties as deputy<br/>4 assistant secretary?</p> <p>5 A. As deputy assistant secretary, I backed up<br/>6 the assistant secretary on his duties; and I also<br/>7 managed the communications efforts for the<br/>8 international affairs, international economic<br/>9 affairs portfolio for Treasury.</p> <p>10 Q. And how long were you the deputy assistant<br/>11 secretary?</p> <p>12 A. Since July of 2003.</p> <p>13 Q. What was your position before July 2003?</p> <p>14 A. Director of the Office of Public Affairs.</p> <p>15 Q. And what were your duties as the director of<br/>16 Office of Public Affairs?</p> <p>17 A. For director of public affairs, I was the<br/>18 direct supervisor for the other public affairs<br/>19 spokesmen in the office. I also had the<br/>20 international economic affairs portfolio for<br/>21 Treasury. So I dealt primarily with international<br/>22 economic issues, and also oversaw -- was the direct</p> | <p>1 A. She is at the National Security Council.</p> <p>2 Q. And what is her position there?</p> <p>3 A. The titles are confusing, but I think she's<br/>4 deputy assistant to the president, deputy national<br/>5 security advisor for public affairs. I think<br/>6 that's right.</p> <p>7 Q. And on October 31st, 2001, which is the date<br/>8 of issue in this case, at that time you were the<br/>9 director of the Office of Public Affairs. Correct?</p> <p>10 A. Um-hmm.</p> <p>11 Q. Is that a yes?</p> <p>12 A. Yes, I was.</p> <p>13 Q. And you supervised Ms. Holahan?</p> <p>14 A. Yes.</p> <p>15 Q. At that time? Now, before you were the<br/>16 director of the Office of Public Affairs, did you<br/>17 hold any other positions before that at Treasury?</p> <p>18 A. For a very brief time, I was hired as a<br/>19 public affairs specialist and then quickly became<br/>20 director. I can't remember the exact date on the<br/>21 beginning of that.</p> <p>22 Q. And what does a public affairs specialist</p> |

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| <p>1 do?</p> <p>2 A. As a spokesman.</p> <p>3 Q. Spokesman?</p> <p>4 A. Yeah.</p> <p>5 Q. And you were a spokesman for what area?</p> <p>6 A. International affairs and domestic finance.</p> <p>7 Q. And you reported to whom?</p> <p>8 A. To Michele Davis. There was no director at</p> <p>9 the time, and I quickly became director.</p> <p>10 Q. Now, would you please summarize your</p> <p>11 educational background for us.</p> <p>12 A. Yeah. I have an undergraduate degree from</p> <p>13 the University of Pittsburgh, a B.A. degree in</p> <p>14 economics, and a few degrees or a few credits shy</p> <p>15 of a master's degree from the graduate school</p> <p>16 public international affairs at the University of</p> <p>17 Pittsburgh.</p> <p>18 Q. After you graduated from the University of</p> <p>19 Pittsburgh in 1988, what did you do in terms of</p> <p>20 employment?</p> <p>21 A. Boy. I drove a coffee delivery truck in</p> <p>22 southwestern Pennsylvania, in the four-state area,</p> | <p>1 at the University of Pittsburgh, after graduate</p> <p>2 school I went to work in Congress for a new</p> <p>3 freshman congressman, and that initial summer of</p> <p>4 employment was as a paid intern.</p> <p>5 Q. What summer was that?</p> <p>6 A. That was the summer of 1990. I'm sorry,</p> <p>7 1991.</p> <p>8 Q. So you were a paid intern for a congressman</p> <p>9 in the summer of 1991?</p> <p>10 A. Um-hmm.</p> <p>11 Q. Is that a yes?</p> <p>12 A. Yes.</p> <p>13 Q. You have to say yes, because --</p> <p>14 A. I understand. I will try to remember.</p> <p>15 Q. And who was the congressman?</p> <p>16 A. Rick Santorum.</p> <p>17 Q. And after the summer of 1991 as his intern,</p> <p>18 what did you do?</p> <p>19 A. I was hired as a legislative assistant in</p> <p>20 his office.</p> <p>21 Q. For then Congressman Santorum?</p> <p>22 A. For then Congressman Santorum. That's</p>  |
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| <p>1 including southeastern Ohio and the panhandle of</p> <p>2 West Virginia, parts of Maryland; and also coached</p> <p>3 basketball.</p> <p>4 Q. Where? In high school?</p> <p>5 A. High school basketball. Yeah.</p> <p>6 Q. Where?</p> <p>7 A. Montore High School in Pittsburgh,</p> <p>8 Pennsylvania.</p> <p>9 Q. And how long did you do that?</p> <p>10 A. Well, I coached basketball through</p> <p>11 undergraduate and graduate school, and maybe</p> <p>12 finished up my last year in graduate school.</p> <p>13 Q. Did you go straight from college to graduate</p> <p>14 school?</p> <p>15 A. No. I took about maybe a year, less than a</p> <p>16 year.</p> <p>17 Q. And during that year, you coached basketball</p> <p>18 and worked driving a truck?</p> <p>19 A. Um-hmm. Right.</p> <p>20 Q. And while you were in graduate school, after</p> <p>21 graduate school, what was your employment history?</p> <p>22 A. Well, in addition to working at the library</p>                                | <p>1 right.</p> <p>2 Q. And how long were you a legislative</p> <p>3 assistant?</p> <p>4 1992, I became press secretary.</p> <p>5 Q. For Congressman Santorum?</p> <p>6 A. For Congressman Santorum. Yeah.</p> <p>7 Q. And how long did you do that?</p> <p>8 A. I was his press secretary while we were in</p> <p>9 the House, so that took us through to January of</p> <p>10 1995. In January of 1995, I became -- he had won</p> <p>11 election as a U.S. Senator. I became a statewide</p> <p>12 press secretary, and served as his statewide press</p> <p>13 secretary working from our Pittsburgh office in</p> <p>14 1995. In 1996, I became communications director.</p> <p>15 In January of 1996.</p> <p>16 Q. What were your duties as communications</p> <p>17 director? Handling all press for Senator Santorum?</p> <p>18 A. That's right.</p> <p>19 Q. How long did you do that?</p> <p>20 A. I did that until January of 1998.</p> <p>21 Q. What did you do then?</p> <p>22 A. I moved back to Pennsylvania, and worked as</p> |

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|---|--|
| <p>1 a political director on the reelection campaign for<br/> 2 then Governor Tom Ridge in Pennsylvania.<br/> 3 Q. What did you do in the campaign?<br/> 4 A. A lot of outreach events to coalition<br/> 5 groups. Spoke to media, organized events, spoke at<br/> 6 political -- in political events.<br/> 7 Q. And -- well, and Ridge got elected.<br/> 8 Correct?<br/> 9 A. He got elected. Yeah.<br/> 10 Q. And what did you do?<br/> 11 A. I spent a brief --<br/> 12 Q. After November.<br/> 13 A. Yeah. I spent a brief period of time, no<br/> 14 more than a month or so, working in the Governor's<br/> 15 office after the campaign, and then went to work<br/> 16 for a consortium of economic development groups in<br/> 17 southwestern Pennsylvania where I advocated in<br/> 18 Harrisburg for economic development -- regional<br/> 19 economic development projects and policy change.<br/> 20 Q. And what was the consortium, or what did it<br/> 21 consist of?<br/> 22 A. It was a group that was included -- I was</p>  | <p>1 together all the other groups. But like I said, I<br/> 2 was directly employed -- my paycheck came from the<br/> 3 Chamber of Commerce.<br/> 4 Q. And you worked on legislative affairs for<br/> 5 whom?<br/> 6 A. Government affairs.<br/> 7 Q. Government affairs?<br/> 8 A. Yeah.<br/> 9 Q. Dealing with both the State and the Federal<br/> 10 Governments?<br/> 11 A. Not really the Federal Government. All of<br/> 12 our projects were State projects.<br/> 13 Q. And what kind of work did you do? I mean,<br/> 14 what were your duties?<br/> 15 A. I spent a lot of time, typical advocacy<br/> 16 activities where you encourage, you know, advocates<br/> 17 for a project to contact their legislators. I<br/> 18 would meet with legislators. I would attend their<br/> 19 golf outings and occasionally do some fund raising<br/> 20 for them. I would spend a lot of time in meetings<br/> 21 trying to encourage legislators and officials in<br/> 22 state government to support projects that we were</p> |
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| <p>1 directly employed by the Greater Pittsburgh Chamber<br/> 2 of Commerce, but the group where I took my guidance<br/> 3 from included an organization called the Pittsburgh<br/> 4 Regional Alliance. They've since merged. The<br/> 5 Pittsburgh Regional Alliance was largely just a<br/> 6 marketing, a regional marketing group. And the<br/> 7 group also included the Pittsburgh Technology<br/> 8 Council, which is an association of technology<br/> 9 companies in the region, and an organization called<br/> 10 the Allegheny Conference on Community Development,<br/> 11 which was arranged and created by a group of CEOs<br/> 12 in southwestern Pennsylvania where they would try<br/> 13 to prioritize economic development priorities, you<br/> 14 know, for the region.<br/> 15 Q. But you were an employee?<br/> 16 A. I was the vice president of government<br/> 17 affairs.<br/> 18 Q. Vice president of government affairs. For<br/> 19 which of the groups or for whom?<br/> 20 A. Well, it was always confusing. I would<br/> 21 rather refer to it as the Pittsburgh Regional<br/> 22 Alliance, because it was the group that brought</p> | <p>1 advocating and why our projects deserved funding<br/> 2 over other projects.<br/> 3 Q. The fund raising was done for whom?<br/> 4 A. Numerous candidates.<br/> 5 Q. Candidates?<br/> 6 A. Yeah.<br/> 7 Q. And how long did you do this job?<br/> 8 A. About 20 months. Until approximately<br/> 9 September of -- well, whatever the date was.<br/> 10 August or September of 2000, when I joined the<br/> 11 Bush-Cheney campaign.<br/> 12 Q. And what did you do for the campaign?<br/> 13 A. My title was a communications specialist,<br/> 14 but I did lots of things, including press advance.<br/> 15 So I was advancing sites for events in the state of<br/> 16 Pennsylvania that included some speaking to the<br/> 17 media, it included helping to organize coalitions<br/> 18 and other surrogate groups that were coming into<br/> 19 the state to campaign on behalf of then Governor<br/> 20 Bush.<br/> 21 Q. And your focus was Pennsylvania?<br/> 22 A. Yeah.</p>   |

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| <p>1 Q. You were the lead press person for</p> <p>2 Pennsylvania?</p> <p>3 A. Umm.</p> <p>4 Q. For the campaign?</p> <p>5 A. That's probably overstating it, yeah, in</p> <p>6 title. But, I mean, the communications for the</p> <p>7 campaign came from the campaign, from Austin. So I</p> <p>8 would take some direction and I would do some</p> <p>9 communication with the media and do some</p> <p>10 interviews, but there were lots of people in the</p> <p>11 state that communicated.</p> <p>12 Q. And you worked right through November 2000?</p> <p>13 A. Yes.</p> <p>14 Q. And then what did you do?</p> <p>15 A. Then, you might remember we had things going</p> <p>16 on in Florida.</p> <p>17 Q. Right.</p> <p>18 A. So I went to Florida for five glorious</p> <p>19 weeks, and worked on lots of activities in Florida</p> <p>20 having to do with jams and other things.</p> <p>21 Q. Pennsylvania went blue.</p> <p>22 A. It did. It went close. I batted 500 that</p>   | <p>1 Q. No?</p> <p>2 A. No.</p> <p>3 Q. And when you worked on the inaugural</p> <p>4 committee, you reported to whom?</p> <p>5 A. That's a good question. You know, I was</p> <p>6 part of a team setting up one of the inaugural</p> <p>7 balls. The lead person on the ball was a guy named</p> <p>8 Mike Heath. I guess I reported to the executive</p> <p>9 director, who was Jean Johnson Phillips.</p> <p>10 Q. And then --</p> <p>11 A. I don't think she knew me, though.</p> <p>12 Q. And after January of 2001, you started</p> <p>13 working --</p> <p>14 A. After January 2001, I went back -- I guess</p> <p>15 went back home to Pittsburgh. And then, because</p> <p>16 I've had advanced experience, the White House</p> <p>17 office of public advance asked me while they were</p> <p>18 figuring out -- I requested to go to Treasury. And</p> <p>19 while they were determining whether I would in fact</p> <p>20 go to Treasury, asked me to do a number of advanced</p> <p>21 jobs for the President. So I did I think four</p> <p>22 advanced trips for the President, and sometime</p>  |
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| <p>1 night because I said that both Pennsylvania and</p> <p>2 Florida.</p> <p>3 Q. West Virginia did not. Right? Pennsylvania</p> <p>4 went blue?</p> <p>5 A. That's right.</p> <p>6 Q. So you went down to Florida for five weeks.</p> <p>7 And what did you do in Florida?</p> <p>8 A. Anything. We were organizing press events</p> <p>9 to, you know, get public sentiment in favor of our</p> <p>10 view of how events were playing out in Florida.</p> <p>11 Q. And after Florida, what happened? What did</p> <p>12 you do next?</p> <p>13 A. I submitted -- well, maybe while -- I guess</p> <p>14 it was after Florida, I went back home to</p> <p>15 Pittsburgh and submitted my information to the</p> <p>16 White House for possible employment in the</p> <p>17 administration. And after the holidays, after</p> <p>18 Christmas holidays, went to -- came down to</p> <p>19 Washington to work on the inaugural. So I worked</p> <p>20 for the presidential inaugural committee.</p> <p>21 Q. Did you have a title in Florida?</p> <p>22 A. No.</p> | <p>1 during January learned -- or during February, early</p> <p>2 February, learned that the Treasury wanted to hire</p> <p>3 me. And --</p> <p>4 Q. Why did you want to go to Treasury?</p> <p>5 A. Well, it fit my interests. I mean, I knew</p> <p>6 that -- a lot of people didn't know -- weren't</p> <p>7 fully aware of Treasury's whole in international</p> <p>8 economics and in development in particular. And I</p> <p>9 had strong interest, I had strong interest in that.</p> <p>10 I have a degree in economics and cared about the</p> <p>11 issues of Treasury. I also know it's the second</p> <p>12 best address in town, and they pay better than the</p> <p>13 first best address in town. So --</p> <p>14 Q. That's a pretty good address.</p> <p>15 A. Yeah. I needed to be able to afford -- I</p> <p>16 could have gone to work in the White House, but I</p> <p>17 couldn't afford to work in the White House.</p> <p>18 Q. Now, when you started to work at the Office</p> <p>19 of Public Affairs, did you receive any training for</p> <p>20 your work that you would be doing?</p> <p>21 A. No formal training.</p> <p>22 Q. How about informal training?</p> |

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| <p>1 A. Yeah. I spent a lot of time discussing how<br/>2 the job works with some individuals there, and I<br/>3 also talked to one tremendous resource. Well, one<br/>4 resource who was at Treasury who was Michael Polis<br/>5 who was in the Office of Domestic Finance, was a<br/>6 great resource. And also the previous assistant<br/>7 secretary of Treasury, a woman named Michelle<br/>8 Smith, who had after the Clinton administration had<br/>9 gone on to work at the Fed for Alan Greenspan was<br/>10 someone who I spent a lot of time on the phone with<br/>11 just asking advice on how Treasury conducts its<br/>12 public affairs business.</p> <p>13 Q. And you talked to these various individuals<br/>14 including Mr. Polis and Ms. Smith when you were the<br/>15 director of public affairs, when you were first<br/>16 starting in that job?</p> <p>17 A. Yeah. And I talked to Michael a lot when he<br/>18 was there. He left in late spring, I think. I<br/>19 actually can't remember the date now that Michael<br/>20 left. Michael stayed for a while. But Michael's<br/>21 office was close to mine, so I spent a lot of time<br/>22 talking to Michael. And Michele, I probably spoke</p> | <p>1 I admit at the time I was more -- I was very<br/>2 interested in just learning more about the Treasury<br/>3 bond market, but we spent a lot of time talking<br/>4 about the process also, which I think it was fairly<br/>5 straightforward.</p> <p>6 Q. About how many times did you discuss with<br/>7 him how the announcements were to be handled?</p> <p>8 A. A handful of times. I couldn't put a finer<br/>9 point on it.</p> <p>10 Q. Do you recall what he told you about how<br/>11 refunding conferences were to be conducted?</p> <p>12 A. Refunding press conferences?</p> <p>13 Q. Yes.</p> <p>14 A. He said traditionally the press conference<br/>15 is -- that someone at his level, someone like a<br/>16 deputy assistant secretary or a director of market<br/>17 finance would do a press conference. It wasn't<br/>18 entirely unusual from time to time for an assistant<br/>19 secretary to do a press conference, and maybe once<br/>20 or twice an under secretary. But overwhelmingly it<br/>21 was they were press conferences that were held by<br/>22 someone at his level. There were -- they would</p> |
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| <p>1 to weekly, just sometimes long conversations,<br/>2 sometimes short.</p> <p>3 Q. And what was Mr. Polis's position when you<br/>4 were director of public affairs?</p> <p>5 A. He was a deputy assistant secretary in the<br/>6 Office of Domestic Finance.</p> <p>7 Q. When did he leave Treasury?</p> <p>8 A. I think it was the summer of -- maybe early<br/>9 summer of 2001. I honestly can't remember the<br/>10 date.</p> <p>11 Q. Did you ever discuss with him how Treasury<br/>12 was to handle the release of information to the<br/>13 press and the public?</p> <p>14 MS. WILLIAMS: Objection.</p> <p>15 A. Yeah.</p> <p>16 BY MR. THEODOROU:</p> <p>17 Q. What did you discuss with him, or what do<br/>18 you remember about those discussions?</p> <p>19 A. Well, I had never -- I had never, you know,<br/>20 watched a quarterly funding announcement before I<br/>21 came to Treasury, so I asked him: How do you do<br/>22 the announcements? Why do you do them this way?</p>  | <p>1 prepare a statement and read the statement. He<br/>2 would -- his preference was just read a statement<br/>3 at the press conference, take some questions; and<br/>4 my job was to basically run the press conference in<br/>5 the sense of announcing who was speaking, what<br/>6 the -- you know. And then cutting off questions at<br/>7 the end. One of the great things we get to do is<br/>8 to end a press conference when it's over.</p> <p>9 Q. Did your discussions, did you ever discuss<br/>10 the use of embargoes at Treasury?</p> <p>11 A. I don't think I discussed them with Michael.<br/>12 No.</p> <p>13 Q. Did you discuss them with anyone else?</p> <p>14 A. I'm fairly certain. I couldn't remember a<br/>15 specific conversation, but I'm very certain that I<br/>16 discussed embargoes with Michelle Smith.</p> <p>17 Q. Do you remember anything else that Mr. --</p> <p>18 A. I discussed embargoes with our reporters<br/>19 also.</p> <p>20 Q. With whom?</p> <p>21 A. With our reporters, with Treasury press<br/>22 corps reporters.</p>  |

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| <p style="text-align: right;">Page 38</p> <p>1 Q. With Mr. Polis, do you remember anything<br/>2 else he told you about how to conduct conferences<br/>3 and the release of information?<br/>4 MS. WILLIAMS: Objection.<br/>5 A. No. Other than to, you know, rescue him at<br/>6 the end when the -- don't let the reporters try to<br/>7 have too much time for more creative questions.<br/>8 BY MR. THEODOROU:<br/>9 Q. Did anyone at Treasury ever tell you that<br/>10 the information at the refunding conferences was<br/>11 market sensitive information?<br/>12 A. Yes.<br/>13 Q. Who?<br/>14 A. I think everyone in the Office of Domestic<br/>15 Finance that I spoke to was very sensitive to that<br/>16 fact. It was also part of my -- I think it was<br/>17 mentioned, not specifically quarterly refundings,<br/>18 but we had -- you know, we were required to have<br/>19 security, you know, security briefings and ethics<br/>20 briefings and that. So we were sensitized coming<br/>21 into the job in our early briefings that Treasury,<br/>22 you know, information at Treasury is at least</p>                                   | <p style="text-align: right;">Page 40</p> <p>1 Q. Do you remember who told you this about<br/>2 market sensitive information at these briefings?<br/>3 A. No.<br/>4 Q. Now, apart from Mr. --<br/>5 A. Michael Polis certainly told me the fact<br/>6 that it was market sensitive. No question about<br/>7 that.<br/>8 Q. That what was market sensitive?<br/>9 A. That the quarterly funding information was<br/>10 market sensitive. When I think you asked me, I<br/>11 think I said everyone, I could tell you without a<br/>12 doubt that Michael certainly told me that and<br/>13 emphasized it.<br/>14 Q. And you don't recall discussing embargoes<br/>15 though with Michael?<br/>16 A. No.<br/>17 Q. Now, you testified that you may have<br/>18 discussed embargoes with Michelle Smith?<br/>19 A. Um-hmm. Yes.<br/>20 Q. Do you remember discussing that with<br/>21 Michelle Smith?<br/>22 A. I do remember. I couldn't pinpoint the</p>                |
| <p style="text-align: right;">Page 39</p> <p>1 market sensitive, and some of it reaches higher<br/>2 classification levels, also. Although market<br/>3 sensitive isn't technically you would call it a<br/>4 classification level.<br/>5 Q. What do you recall about the training that<br/>6 you got on how information was market sensitive?<br/>7 A. I think it was just noted that, you know,<br/>8 information we deal with at Treasury, like<br/>9 information on our securities markets, information<br/>10 regarding future policy decisions could have an<br/>11 impact on the market. I know that -- I mean, you<br/>12 don't want to be remembered as the guy who<br/>13 inadvertently crashed the dollar market by letting<br/>14 information out that is out of context or not<br/>15 authorized at that time.<br/>16 Q. Now, you testified -- and you can correct me<br/>17 if I'm wrong. You testified that when you started,<br/>18 there were some briefings on this?<br/>19 A. Um-hmm.<br/>20 Q. Is that, yes, there were some briefings?<br/>21 A. Yes. I remember being -- I remember having<br/>22 briefings coming in to Treasury.</p> | <p style="text-align: right;">Page 41</p> <p>1 exact conversation or what the context of<br/>2 discussion of embargoes were, but I do recall<br/>3 asking her how they use -- how they use embargoes,<br/>4 and that they do use embargoes and what the<br/>5 understanding at Treasury was of embargoes.<br/>6 Q. What did she tell you about -- or, how many<br/>7 times did you discuss the issue of embargoes with<br/>8 her?<br/>9 A. I remember one phone call. There might have<br/>10 been more.<br/>11 Q. How long was the phone call?<br/>12 A. I don't recall.<br/>13 Q. Do you remember when it was?<br/>14 A. I couldn't put a specific date on it. I<br/>15 would -- it must have been March of 2001.<br/>16 Q. Do you remember how long it lasted?<br/>17 A. No.<br/>18 Q. Was anybody else on the phone call?<br/>19 A. No.<br/>20 Q. Where were you when you had the phone call?<br/>21 A. In my office at Treasury.<br/>22 Q. And where was she?</p> |

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| <p style="text-align: right;">Page 42</p> <p>1 A. She was at her office at the Fed.</p> <p>2 Q. What was her job at the Fed at the time?</p> <p>3 A. I'm not certain of her title at the Fed.</p> <p>4 I'm sure it's on their Web site. I don't know what</p> <p>5 their structure of titles are over there.</p> <p>6 Q. Did she call you, or did you call her?</p> <p>7 A. I'm sure I -- I'm sure I called her.</p> <p>8 Whether I had to leave a message and she called me</p> <p>9 back, I don't know.</p> <p>10 Q. What did you call her --</p> <p>11 A. I called her a lot.</p> <p>12 Q. But I'm zooming in on this particular</p> <p>13 conversation as to what you can recall. And what</p> <p>14 do you recall about the discussion of embargoes in</p> <p>15 that telephone call?</p> <p>16 A. I asked her how they traditionally set</p> <p>17 embargoes at Treasury for documents, because it</p> <p>18 was -- it was impressive to me that the reporters</p> <p>19 we were dealing with on our documents wanted</p> <p>20 embargoes. They were -- it was very important to</p> <p>21 them that we have, that we have embargoes on</p> <p>22 documents. And certainly it was intuitive to me on</p>  | <p style="text-align: right;">Page 44</p> <p>1 whether an embargo is necessary or not, it was</p> <p>2 perfectly fine to let the reporters set their own</p> <p>3 embargo for themselves.</p> <p>4 Q. Did she say in this conversation as to why</p> <p>5 reporters wanted embargoes?</p> <p>6 A. We had a conversation about that. There</p> <p>7 was, it was -- yes. I mean, so it was -- I mean,</p> <p>8 it was a dialogue back and forth, and what we were</p> <p>9 discussing was the reason why reporters feel that</p> <p>10 they need embargoes. And as I said earlier, in my</p> <p>11 mind it made a lot of sense to have an embargo</p> <p>12 because you're putting information out and you want</p> <p>13 to make sure that reporters have sufficient time to</p> <p>14 consume the information and disseminate it as</p> <p>15 accurately as possible. And, you know, that's</p> <p>16 obviously really important.</p> <p>17 I understood why it was really important to</p> <p>18 us, but one of the really pleasant surprises when I</p> <p>19 came to Treasury was this, from my perspective, a</p> <p>20 much higher standard for reporting accurately what</p> <p>21 information is given to Treasury reporters. They</p> <p>22 are -- there is no better -- you know, we talk</p>                                |
| <p style="text-align: right;">Page 43</p> <p>1 something involving data, that we would want</p> <p>2 embargoes, but it seemed to me that for any</p> <p>3 document that came down to the Treasury pressroom,</p> <p>4 the Treasury press reporters wanted to have</p> <p>5 embargoes.</p> <p>6 Q. And what was the substance of your</p> <p>7 conversation with her? What did you say and what</p> <p>8 did she say?</p> <p>9 A. I asked her whether that was the case when</p> <p>10 she was here, or whether it was something new with</p> <p>11 the new group of people at Treasury. Did she set</p> <p>12 the embargoes, or did the reporters set the</p> <p>13 embargoes for themselves?</p> <p>14 She said that there wasn't -- there wasn't a</p> <p>15 standard way for doing it that way. Sometimes --</p> <p>16 she agreed that reporters always do, they always</p> <p>17 want embargoes. She confirmed what I thought, was</p> <p>18 that it was probably in everyone's interest that we</p> <p>19 do have an embargo. She said that it really</p> <p>20 depended on the document, whether it was -- whether</p> <p>21 we set the embargo or whether, if it was a document</p> <p>22 that we didn't have much interest in in terms of</p> | <p style="text-align: right;">Page 45</p> <p>1 about the markets. Right? A lot of people ask me</p> <p>2 about the markets and, like, how do you talk to the</p> <p>3 markets? Well, there is no more efficient way to</p> <p>4 talk to the markets than through the financial</p> <p>5 wires or in the Treasury pressroom. So we give</p> <p>6 information to them directly. And, you know, when</p> <p>7 I say the markets, you might think of some trading</p> <p>8 floors up in New York, but the markets are</p> <p>9 everywhere. They are in Tokyo, London, and</p> <p>10 Johannesburg, and Chicago, and the only way to</p> <p>11 speak directly to them quickly is through the</p> <p>12 financial wires.</p> <p>13 They recognize that a lot of investors are</p> <p>14 looking at their stories and trading on the news</p> <p>15 that comes from those stories; and if their stories</p> <p>16 are inaccurate, they are probably going to cost</p> <p>17 somebody some money or make -- you know, make money</p> <p>18 for someone based on that information. Either way,</p> <p>19 it hurts their reputation as reporters. So they</p> <p>20 have -- and I distinguish that from reporters that</p> <p>21 I dealt with in politics or on Capitol Hill, where</p> <p>22 those reporters can get away with writing a he</p> |

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| <p style="text-align: right;">Page 46</p> <p>1 said/she said story. It's really easy to have a<br/> 2 balanced story, you just get somebody on the other<br/> 3 side to say something in opposition and you throw<br/> 4 the story out and it's okay. And that's sort of --<br/> 5 that's sort of okay for political rhetoric.<br/> 6 Q. Like reporters in red states?<br/> 7 A. Red states or blue states. But it's real<br/> 8 easy, you know, to write that kind of story and<br/> 9 say -- they don't have to be as concerned with the<br/> 10 question of accuracy as they do with balance. You<br/> 11 know. Their ethic of fairness is balance, where it<br/> 12 seems like the ethic of fairness for reporters at<br/> 13 least covering Treasury is accuracy, to report<br/> 14 faithfully what the information is that they are<br/> 15 getting. And it's not that they don't look for<br/> 16 opposition voices or, you know, ways to counter.<br/> 17 But on straight news for an initial story that<br/> 18 comes out, they want to make sure that they are<br/> 19 reporting accurately and faithfully the news,<br/> 20 because that information is going out to reporters.<br/> 21 That was a pleasant surprise for me at<br/> 22 Treasury. It's great to deal with reporters that</p> | <p style="text-align: right;">Page 48</p> <p>1 Q. Do you know if there was a set of written<br/> 2 procedures on how embargoes are to be handled at<br/> 3 Treasury at that time?<br/> 4 A. No. Not at that time. And, I mean, from my<br/> 5 perspective, it would have been a -- and especially<br/> 6 looking back, it would have been a, you know,<br/> 7 solution in search of a problem, because there<br/> 8 didn't seem to me to be an embargo problem at<br/> 9 Treasury.<br/> 10 Q. Do you know, as of October 31, 2001, whether<br/> 11 there were any written procedures about how<br/> 12 embargoes were to be handled for refunding<br/> 13 conferences?<br/> 14 A. No.<br/> 15 Q. Do you know if there were such written<br/> 16 procedures?<br/> 17 A. I don't know.<br/> 18 Q. Getting back to your discussion with<br/> 19 Michelle Smith. What else do you remember her<br/> 20 telling you about embargoes, other than she said<br/> 21 reporters wanted embargoes?<br/> 22 MS. WILLIAMS: Objection.</p>                            |
| <p style="text-align: right;">Page 47</p> <p>1 were very, you know, professional about reporting<br/> 2 the news that way.<br/> 3 Q. So when you started at Treasury and when you<br/> 4 became the director of the Office of Public Affairs<br/> 5 and had these discussions with Ms. Smith, there was<br/> 6 no set embargo policy at Treasury?<br/> 7 A. No.<br/> 8 MS. WILLIAMS: Objection.<br/> 9 BY MR. THEODOROU:<br/> 10 Q. There was no definition of embargo in any<br/> 11 Treasury policy?<br/> 12 A. There was no --<br/> 13 MS. WILLIAMS: Objection.<br/> 14 THE WITNESS: Sorry.<br/> 15 A. There was no -- I would say there was no<br/> 16 formal written -- if you were looking for a formal<br/> 17 written policy on embargoes, none that I was aware<br/> 18 of.<br/> 19 BY MR. THEODOROU:<br/> 20 Q. So do you know if there was a written policy<br/> 21 on embargoes?<br/> 22 A. I don't know.</p>  | <p style="text-align: right;">Page 49</p> <p>1 A. I don't recall -- specifically on the<br/> 2 question of embargoes, I don't recall what else,<br/> 3 what other points we may have said. I think we<br/> 4 agreed that having time between the release of the<br/> 5 news and the actual publication of the news, some<br/> 6 element of time was beneficial both for them and<br/> 7 for us. And so we agreed, embargoes are good and<br/> 8 we should have embargoes.<br/> 9 BY MR. THEODOROU:<br/> 10 Q. Now, was your call prompted by you, by<br/> 11 reporters talking to you about embargoes?<br/> 12 MS. WILLIAMS: Objection.<br/> 13 A. No.<br/> 14 BY MR. THEODOROU:<br/> 15 Q. You had said that when you started -- let me<br/> 16 strike that.<br/> 17 You said that you had discussions with<br/> 18 reporters who wanted embargoes. Is that right?<br/> 19 A. Yes.<br/> 20 Q. Do you remember who the reporters were?<br/> 21 A. There were a number of reporters I had<br/> 22 discussions with about embargoes. And I could tell</p> |

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| <p>1 you for certain Marty Krutsinger who was and still<br/>2 is the Associated Press reporter covering Treasury.<br/>3 Glenn Somerville.<br/>4 Q. Who is he with?<br/>5 A. He was a Reuters, he still is a Reuters<br/>6 reporter also still covering Treasury. Simon<br/>7 Kennedy who was a -- he's a Bloomberg reporter. He<br/>8 is no longer covering Treasury, he is based in<br/>9 Paris. Those three in particular I know for<br/>10 certain I had conversations with.<br/>11 Q. Now, did you have conversations with them<br/>12 about the use of embargoes before October 31, 2001?<br/>13 A. Yes. Before and after.<br/>14 Q. Let's focus on before.<br/>15 A. Okay.<br/>16 Q. Did they educate you about embargoes and how<br/>17 they were used at these conferences?<br/>18 A. You're asking specifically about these<br/>19 conferences?<br/>20 Q. Quarterly refunding conferences.<br/>21 A. Yeah. I think our discussion -- we may have<br/>22 touched on quarterly refunding conferences, but I</p>                  | <p>1 about embargoes?<br/>2 A. No. I definitely had --<br/>3 MS. WILLIAMS: Objection.<br/>4 A. They were absolutely present in discussions.<br/>5 But you are asking if I had individual discussions<br/>6 with them? I don't recall if they were individual<br/>7 or whether they were -- or whether those<br/>8 discussions -- now that I'm thinking about it, I<br/>9 think those discussions took place in the open<br/>10 space of the Treasury pressroom. So they were<br/>11 there, there were others who were in the room as<br/>12 well. And so I just don't recall who else was<br/>13 within listening distance.<br/>14 Q. So let's focus, before October 31st, 2001,<br/>15 you recall having discussions with reporters about<br/>16 the use of embargoes in the open space of the<br/>17 Treasury pressroom?<br/>18 A. Yes.<br/>19 Q. Okay. Do you remember what reporters were<br/>20 present?<br/>21 A. Not at any one point in time. No. Other<br/>22 than I know Marty was always there, and I remember</p>                     |
| Page 51   | Page 53   |
| <p>1 doubt it. I think our discussions were more<br/>2 general than that.<br/>3 Q. What do you remember about your discussions<br/>4 with Mr. Krutsinger? If that's correct?<br/>5 A. Krutsinger.<br/>6 Q. Krutsinger?<br/>7 A. I'm not sure that -- I'll be honest, I'm not<br/>8 sure the discussions -- I can, I'm certain that I<br/>9 had individual one-on-one discussions with Simon<br/>10 Kennedy from time to time, who at the time<br/>11 actually, now that I also recall, he wasn't with<br/>12 Bloomberg at the time, he was with Bridge News<br/>13 which is now defunct. So he was with Bridge News<br/>14 at the time. And I know that I had individual<br/>15 conversations with Simon about it.<br/>16 Q. But you're not --<br/>17 A. About these and other -- I mean, I was<br/>18 trying to get familiar with how the Treasury press<br/>19 corps interacted with the press officers at<br/>20 Treasury.<br/>21 Q. But you are not sure that you had<br/>22 discussions with Mr. Somerville and Mr. Krutsinger</p> | <p>1 talking to Marty. And he was a long-time Treasury<br/>2 reporter, so I was interested in his past.<br/>3 Jonathan Nichols was maybe there. There's no way I<br/>4 can recall who specifically was there.<br/>5 Q. As best you can recall, how many discussions<br/>6 did you have with reporters in the room about<br/>7 embargoes and how they were to be used at refunding<br/>8 conferences?<br/>9 A. I couldn't -- specifically about refunding<br/>10 conferences?<br/>11 Q. Yes.<br/>12 A. I don't know.<br/>13 Q. How about embargoes generally as to<br/>14 conferences, press conferences at Treasury?<br/>15 A. I would say two to three conversations in<br/>16 the Treasury pressroom with the reporters who were<br/>17 probably present there.<br/>18 Q. Now, and we are focusing again before<br/>19 October 31, 2001. So you remember two to three?<br/>20 A. Yeah. If I can put it in a little better<br/>21 context. I was spending a lot of time in March of<br/>22 2001, March and April of 2001 talking to Treasury</p> |

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| <p style="text-align: right;">Page 54</p> <p>1 reporters just about basic procedures, how we<br/>2 interact with each other. We were, I talked to<br/>3 them about things like, how early do you get<br/>4 testimony, you know, before it's given on Capitol<br/>5 Hill? I talked to them about, when we travel, who<br/>6 gets -- if we're traveling and we give a speech,<br/>7 who gets the speech? You know. You reporters who<br/>8 are traveling, or does it go back to the Treasury<br/>9 pressroom?<br/>10 So lots of those really just sort of, you<br/>11 know, what are the sort of standard operating<br/>12 procedures for interaction on our business.<br/>13 Q. So you were talking to the equivalent, the<br/>14 equivalent of Helen Thomas --<br/>15 A. Exactly.<br/>16 Q. -- at Treasury about how things are<br/>17 conducted?<br/>18 A. Don't ever say that I characterized Marty<br/>19 that way, though.<br/>20 Q. What was the substance of the conversation?<br/>21 So they were educating you about how embargoes were<br/>22 to be conducted?</p>   | <p style="text-align: right;">Page 56</p> <p>1 recall. As best you can recall what the substance<br/>2 of what was said about embargoes, what did you say,<br/>3 what did they say at these two or three meetings?<br/>4 A. I recall saying, do you like -- you know,<br/>5 you guys seem to want embargoes for all documents.<br/>6 Is that something that you want us to continue?<br/>7 You know, you want embargoes?<br/>8 And they said, yeah, we definitely want<br/>9 embargoes. You know, it helps us. It helps us be<br/>10 consistent in all of us delivering the news. You<br/>11 don't have to worry about picking favorites for<br/>12 releasing news. It's standard in the way that we<br/>13 do our business, and it will make -- it just makes<br/>14 life easier for all of us. And you can -- from<br/>15 your perspective, you can be certain that when the<br/>16 news goes out to the market, it's coming out in a<br/>17 standard, predictable, reliable way.<br/>18 And that all made sense to me.<br/>19 We had conversations about whether they<br/>20 prefer that I set the embargo or they set the<br/>21 embargo. They said it doesn't really matter to<br/>22 them which way it's done. Either way, you know,</p> |
| <p style="text-align: right;">Page 55</p> <p>1 A. Yeah, how they traditionally used embargoes.<br/>2 And they said, they had a saying on embargoes.<br/>3 They still have the same saying: Everyone goes in<br/>4 together, everyone comes out together, nobody gets<br/>5 hurt. You know? They want the -- you know, they<br/>6 want to know that they are all getting the news at<br/>7 the same time and that they will all be publishing<br/>8 the news at the same time. And, you know, that's<br/>9 helpful for them, it's good for the markets so that<br/>10 the markets don't have to be searching across<br/>11 different sources of news to find out who is<br/>12 getting it first and who is getting it out first.<br/>13 And that was -- that made me comfortable also.<br/>14 Q. All right. These two to three meetings<br/>15 regarding embargoes, what do you remember about the<br/>16 substance of the conversation with the reporters?<br/>17 A. I think, just what I said, that -- I mean,<br/>18 there was also a discussion of the procedures for<br/>19 the release of the Federal Open Market Committee<br/>20 statements during FOMC meetings that comes from the<br/>21 Treasury pressroom.<br/>22 Q. Let's break it down as to the best you can</p> | <p style="text-align: right;">Page 57</p> <p>1 it's the same.<br/>2 We talked a little bit about what an<br/>3 embargo -- you know, about what an embargo means.<br/>4 So, you know, who -- what do you do with the news<br/>5 when you get it? Does it -- do you, you know, can<br/>6 you send it back to your -- you know, can you send<br/>7 it back to your news organization? And I know<br/>8 that, from my perspective, you know, dissemination<br/>9 and publishing, well, publishing news in a way<br/>10 that -- you know, I make a distinction between news<br/>11 organizations and general public. So if it's in a<br/>12 place where the general public can get it, then<br/>13 that's disseminating. If you're a news<br/>14 organization, then, you know, you can definitely<br/>15 communicate with your news organizations.<br/>16 Q. So that was concluded, that they could<br/>17 communicate with the news organizations, you said,<br/>18 at one of these meetings?<br/>19 A. I said I have no problem with reporters<br/>20 communicating with their news organizations.<br/>21 Q. Did you say anything about discussing the<br/>22 information with anybody outside of the news</p>                                    |

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| <p>1 organizations?</p> <p>2 <b>A. I don't recall.</b></p> <p>3 Q. You mentioned that you discussed the time,</p> <p>4 setting the time for the embargo.</p> <p>5 <b>A. (Nodding head.)</b></p> <p>6 Q. In these discussions, did you arrive at any</p> <p>7 procedure or conclusion as to how to set the time</p> <p>8 for embargo?</p> <p>9 <b>A. Just that it would, you know, that we should</b></p> <p>10 <b>just, you know, whatever -- their feeling is it</b></p> <p>11 <b>should be left up to me. But where I didn't have</b></p> <p>12 <b>an interest in what the embargo time should be,</b></p> <p>13 <b>that they are going to want -- they are going to</b></p> <p>14 <b>set their own embargo on their own anyway.</b></p> <p>15 <b>So if I come down with a document that</b></p> <p>16 <b>wasn't going to generate news or going to be</b></p> <p>17 <b>anticipated to generate news, that maybe wouldn't</b></p> <p>18 <b>be market sensitive, they would still want to set</b></p> <p>19 <b>an embargo amongst themselves. And this happens</b></p> <p>20 <b>frequently. We bring down, say, a statement from</b></p> <p>21 <b>the senior Treasury official, and they will ask,</b></p> <p>22 <b>what's the embargo? And I'll say, you guys decide</b></p> | <p>1 Q. For quarterly refunding conferences before</p> <p>2 October 31?</p> <p>3 MS. WILLIAMS: Objection.</p> <p>4 <b>A. I had only -- I had only witnessed one</b></p> <p>5 <b>quarterly refunding announcement before October</b></p> <p>6 <b>31st, so I couldn't say whether that was standard.</b></p> <p>7 <b>BY MR. THEODOROU:</b></p> <p>8 Q. Was --</p> <p>9 <b>A. But for?</b></p> <p>10 Q. For press conferences.</p> <p>11 <b>A. Yeah. It just really depended.</b></p> <p>12 Q. For the press conferences that you handled</p> <p>13 and supervised before October 31, was the procedure</p> <p>14 that the reporters would set the embargo time?</p> <p>15 <b>A. It really depended. They did set the</b></p> <p>16 <b>embargo time at the quarterly refunding press</b></p> <p>17 <b>conference in May, at the end of May.</b></p> <p>18 Q. Reporters set the embargo time?</p> <p>19 <b>A. Um-hmm. Yes.</b></p> <p>20 Q. Did they also set the time at which they</p> <p>21 would get the statement, the copy of the statement?</p> <p>22 <b>A. No.</b></p>   |
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| <p>1 whatever you want. And they all talk amongst</p> <p>2 themselves and say, you know, what do you think, 10</p> <p>3 minutes, 15 minutes? Whatever the consensus agrees</p> <p>4 to. And they note the time on the clock. So let's</p> <p>5 say it's 9:25 and they say we need 10 minutes, and</p> <p>6 they all agree, yeah, 10 minutes. And then they</p> <p>7 will say, okay, let's lift it at 9:35. And</p> <p>8 everyone goes back to their computers and agrees to</p> <p>9 9:35. And then I make a commitment in that case</p> <p>10 that, if they set an embargo, that I won't release</p> <p>11 it on the Web site before their embargo is lifted.</p> <p>12 Q. Were you aware of any Treasury Department</p> <p>13 procedures as to how it was to be handled on the</p> <p>14 Web site other than your discussions with the</p> <p>15 reporters?</p> <p>16 <b>A. No.</b></p> <p>17 Q. And was this the procedure followed before</p> <p>18 October 31, 2001, that reporters set the embargo</p> <p>19 time?</p> <p>20 MS. WILLIAMS: Objection.</p> <p>21 <b>A. For?</b></p> <p>22 <b>BY MR. THEODOROU:</b></p>  | <p>1 Q. Okay. And when we say embargo time, we're</p> <p>2 talking about the amount of time between getting</p> <p>3 the statement and when it could be released?</p> <p>4 <b>A. Yeah. When we say the embargo time, we're</b></p> <p>5 <b>talking about the time that the statement will be</b></p> <p>6 <b>publicly released, where it can be allowed to be</b></p> <p>7 <b>disseminated to the public.</b></p> <p>8 Q. In these two to three discussions that you</p> <p>9 had with the reporters, did you discuss anything</p> <p>10 about lockdown rules or keeping people in and out</p> <p>11 from the press conferences?</p> <p>12 <b>A. We talked about -- not in terms of people,</b></p> <p>13 <b>letting people in or out for the press conferences.</b></p> <p>14 <b>We did discuss that, for FOMC announcements, that</b></p> <p>15 <b>there is a lockdown procedure.</b></p> <p>16 Q. What is FOMC?</p> <p>17 <b>A. Federal Open Market Committee, Federal</b></p> <p>18 <b>Reserve Boards, Monetary Policy Making Committee.</b></p> <p>19 Q. Why was there a lockdown procedure with the</p> <p>20 Federal Open Market Committee and Federal Reserve</p> <p>21 Open Policy Committee, and not with --</p> <p>22 <b>A. That's one thing.</b></p> |

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| <p style="text-align: right;">Page 62</p> <p>1 Q. I'm sorry.</p> <p>2 A. FOMC. That was the way they had always done</p> <p>3 it.</p> <p>4 Q. Did anyone ever consider lockdowns for the</p> <p>5 refunding conferences?</p> <p>6 MS. WILLIAMS: Objection.</p> <p>7 BY MR. THEODOROU:</p> <p>8 Q. Before October 31st, 2001?</p> <p>9 A. Not to my knowledge.</p> <p>10 Q. Did you ever have a discussion with anybody</p> <p>11 at Treasury about using a lockdown procedure for</p> <p>12 refunding conferences?</p> <p>13 A. No.</p> <p>14 Q. Did anyone at Treasury ever suggest that the</p> <p>15 lockdown should be used for refunding conferences?</p> <p>16 A. No.</p> <p>17 MS. WILLIAMS: Objection.</p> <p>18 THE WITNESS: Sorry.</p> <p>19 A. No, never. Again, I think it would be -- my</p> <p>20 view is that it would have been a solution in</p> <p>21 search of a problem.</p> <p>22 BY MR. THEODOROU:</p>  | <p style="text-align: right;">Page 64</p> <p>1 traditional thing. And, as I learned more about</p> <p>2 it, that it was a useful and appropriate way to</p> <p>3 release information at Treasury.</p> <p>4 BY MR. THEODOROU:</p> <p>5 Q. What exactly did an embargo prevent a person</p> <p>6 from doing?</p> <p>7 A. It prevented a member of the news media from</p> <p>8 releasing the information that they received,</p> <p>9 disseminating that information to the general</p> <p>10 public.</p> <p>11 Q. Before a particular time?</p> <p>12 A. Before a particular time. That's right.</p> <p>13 Q. Did it prevent them from disclosing the</p> <p>14 information to anyone?</p> <p>15 MS. WILLIAMS: Objection.</p> <p>16 A. It -- no. I'd say, my view is the general</p> <p>17 -- is that it prevented them from just releasing</p> <p>18 the information to the general public. My view,</p> <p>19 and I think it was the common understanding among</p> <p>20 the reporters in the Treasury pressroom, that it</p> <p>21 was perfectly appropriate to discuss information</p> <p>22 with members of the news organization, like an</p> |
| <p style="text-align: right;">Page 63</p> <p>1 Q. And why is that?</p> <p>2 A. Because I had never seen any event of a</p> <p>3 reporter willfully breaking an embargo.</p> <p>4 MR. THEODOROU: Why don't we take a</p> <p>5 five-minute break.</p> <p>6 THE VIDEOGRAPHER: This concludes tape one</p> <p>7 in the deposition of Tony Fratto. Off the record</p> <p>8 at 11:41:30.</p> <p>9 (Recess taken.)</p> <p>10 THE VIDEOGRAPHER: This begins tape two in</p> <p>11 the deposition of Tony Fratto. On the record at</p> <p>12 11:48:50.</p> <p>13 BY MR. THEODOROU:</p> <p>14 Q. Mr. Fratto, turning your attention to</p> <p>15 October 31st, 2001, after your discussions with</p> <p>16 these reporters, what was your understanding as of</p> <p>17 October 31st of Treasury's policy on the use of</p> <p>18 embargoes?</p> <p>19 MS. WILLIAMS: Objection.</p> <p>20 A. That we had a -- in terms of, you know,</p> <p>21 whether it was a policy, my view is that we had a</p> <p>22 policy of setting embargoes, that it was a</p> | <p style="text-align: right;">Page 65</p> <p>1 editor.</p> <p>2 Q. Did you define for them who at their press</p> <p>3 organizations they could discuss the information</p> <p>4 with?</p> <p>5 A. No. Not specifically.</p> <p>6 Q. Now, a press person who received the</p> <p>7 information at a press conference could discuss</p> <p>8 that information with another Treasury employee?</p> <p>9 MS. WILLIAMS: Objection.</p> <p>10 A. They could discuss that information with a</p> <p>11 member of the Office of Public Affairs.</p> <p>12 BY MR. THEODOROU:</p> <p>13 Q. How about another, an employee who did not</p> <p>14 work at the Office of Public Affairs?</p> <p>15 A. Reporters are not -- let me put it this way.</p> <p>16 Treasury employees outside the Office of Public</p> <p>17 Affairs are not permitted to talk to reporters</p> <p>18 except by authority granted to them and in the</p> <p>19 presence of a member of the Office of Public</p> <p>20 Affairs. That's been a standard policy at Treasury</p> <p>21 for a long time, since the beginning.</p> <p>22 Q. Now, before October 31st, 2001, did you</p>     |

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| <p>1 attend any quarterly refunding press conferences at</p> <p>2 Treasury?</p> <p>3 <b>A. Before October 31st?</b></p> <p>4 Q. Yes.</p> <p>5 <b>A. Yes.</b></p> <p>6 Q. Which one?</p> <p>7 <b>A. May 31st.</b></p> <p>8 Q. May 31st, or May 2nd?</p> <p>9 <b>A. I remember it being in May. It was May.</b></p> <p>10 Q. And who spoke at that conference?</p> <p>11 <b>A. Michael Polis.</b></p> <p>12 Q. So you didn't attend Assistant Secretary</p> <p>13 Roseborough's conference in August?</p> <p>14 <b>A. I don't believe I did. I think I had -- I</b></p> <p>15 <b>don't have a recollection. I remember that Brian</b></p> <p>16 <b>did do the quarterly refunding announcement. I</b></p> <p>17 <b>honestly don't even remember whether I was there or</b></p> <p>18 <b>not.</b></p> <p>19 Q. Okay.</p> <p>20 (FRATTO Exhibit Number 1 was marked for</p> <p>21 identification.)</p> <p>22 BY MR. THEODOROU:</p>   | <p>1 MS. WILLIAMS: Can I just get the copy back?</p> <p>2 MR. THEODOROU: I'm sorry.</p> <p>3 BY MR. THEODOROU:</p> <p>4 Q. That's the November 14th, 2001 interview you</p> <p>5 testified about earlier. Correct?</p> <p>6 <b>A. (Nodding head.)</b></p> <p>7 Q. Now, besides being interviewed on November</p> <p>8 14, 2001, you were interviewed again, weren't you,</p> <p>9 by OIG?</p> <p>10 <b>A. I think so. I don't remember right now.</b></p> <p>11 <b>(FRATTO Exhibit Number 2 was marked for</b></p> <p>12 <b>identification.)</b></p> <p>13 BY MR. THEODOROU:</p> <p>14 Q. I want to show you what's been marked as</p> <p>15 Exhibit 2. Have you seen that document before?</p> <p>16 <b>A. Not that I recall.</b></p> <p>17 Q. You don't remember reviewing this yesterday</p> <p>18 with the SEC attorneys?</p> <p>19 <b>A. No.</b></p> <p>20 Q. This makes reference to a second interview.</p> <p>21 Do you see that?</p> <p>22 <b>A. Yes.</b></p>   |
| Page 67  | Page 69  |
| <p>1 Q. I want you to look at this document. Have</p> <p>2 you seen it before?</p> <p>3 <b>A. I think it was the one I saw yesterday.</b></p> <p>4 <b>Yeah.</b></p> <p>5 Q. Now, it appears that -- and what is the</p> <p>6 document?</p> <p>7 <b>A. It's titled a Memorandum of Activity.</b></p> <p>8 <b>Memorandum of Activity from the Office of Inspector</b></p> <p>9 <b>General.</b></p> <p>10 Q. For what date?</p> <p>11 <b>A. November 14, 2001.</b></p> <p>12 Q. Further on in the document there's another</p> <p>13 memorandum of activity. Excuse me, I'm sorry.</p> <p>14 MS. WILLIAMS: Mine doesn't have one.</p> <p>15 MR. THEODOROU: I'm sorry.</p> <p>16 MR. McGIVERN: It just has the one with the</p> <p>17 exhibits that were attached to it initially.</p> <p>18 MR. THEODOROU: Okay, I've got it. I'm</p> <p>19 sorry. All right.</p> <p>20 BY MR. THEODOROU:</p> <p>21 Q. So this one is the November 14th, 2001</p> <p>22 interview that you had?</p> | <p>1 Q. On December 19, 2001?</p> <p>2 <b>A. Yes.</b></p> <p>3 Q. Do you recall having a second interview with</p> <p>4 the Office of Inspector General?</p> <p>5 <b>A. I honestly don't specifically remember it.</b></p> <p>6 <b>I don't doubt that it happened, I just don't</b></p> <p>7 <b>remember it.</b></p> <p>8 Q. Now, turning to Exhibit 1, the first of the</p> <p>9 two documents that I gave you. On page 2,</p> <p>10 directing your attention to page 2, the fourth</p> <p>11 paragraph on this page makes reference to the</p> <p>12 October 31st, 2001 quarterly refunding press</p> <p>13 conference.</p> <p>14 Before I ask any questions of the document,</p> <p>15 do you want to take some time reading it, or do you</p> <p>16 think you're pretty familiar after having it?</p> <p>17 <b>A. I think I'm relatively familiar with it.</b></p> <p>18 <b>Yeah.</b></p> <p>19 Q. Okay. Do you see where it says, Fratto said</p> <p>20 this was the first time that they had set an</p> <p>21 embargo time prior to the conference?</p> <p>22 <b>A. Yes.</b></p> |

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| <p style="text-align: right;">Page 70</p> <p>1 Q. And in fact it says: Fratto said this was</p> <p>2 the first time they had set an embargo time, 10:00</p> <p>3 a.m., prior to the conference. Normally they poll</p> <p>4 the press at the conclusion of the press conference</p> <p>5 and then set the embargo time.</p> <p>6 Correct?</p> <p>7 A. Yes.</p> <p>8 Q. Now, when you say this was the first time</p> <p>9 that an embargo time was set prior to the</p> <p>10 conference, is that in reference to a quarterly</p> <p>11 refunding conference or to any news conference?</p> <p>12 A. To my knowledge, a quarterly refunding</p> <p>13 conference. Not -- no, definitely not referring to</p> <p>14 other news conferences.</p> <p>15 Q. So before this October 31st, 2001</p> <p>16 conference, a public affairs official polled</p> <p>17 reporters present to determine how much time they</p> <p>18 needed to prepare their stories at the conclusion</p> <p>19 of the conference?</p> <p>20 MS. WILLIAMS: Objection.</p> <p>21 A. At the one quarterly refunding announcement</p> <p>22 that I recall attending, that's the way it was</p>                           | <p style="text-align: right;">Page 72</p> <p>1 A. No.</p> <p>2 MS. WILLIAMS: Objection.</p> <p>3 BY MR. THEODOROU:</p> <p>4 Q. How did they arrive at the time then?</p> <p>5 A. I asked them out loud, with all of them in</p> <p>6 attendance before they left the room, how much time</p> <p>7 do you need for an embargo? And, actually, I</p> <p>8 remember this fairly clearly. It was Simon Kennedy</p> <p>9 who said out loud, suggested about 15 minutes. And</p> <p>10 then another voice said a specific time, and they</p> <p>11 all said, yeah, that's good, okay. So -- and then</p> <p>12 said so then I repeated the time that they had all</p> <p>13 agreed to.</p> <p>14 Q. Did you tell them what they could and could</p> <p>15 not do during that time period, other than setting</p> <p>16 a time period?</p> <p>17 A. No. That would have been unusual. They</p> <p>18 knew exactly what they could and couldn't do: The</p> <p>19 news that had been -- the news that they had gained</p> <p>20 from the press conference could not be publicly</p> <p>21 disseminated.</p> <p>22 Q. And how do you know they knew that?</p>                                    |
| <p style="text-align: right;">Page 71</p> <p>1 done. So when this says what is normal, I can't</p> <p>2 really attest to that other than it definitely had</p> <p>3 been done previously within my experience.</p> <p>4 BY MR. THEODOROU:</p> <p>5 Q. So when you attended the May 2001 quarterly</p> <p>6 refunding conference, did you poll the reporters as</p> <p>7 to determine how much time they needed to prepare</p> <p>8 their stories?</p> <p>9 A. Yes, I did.</p> <p>10 Q. And how much time did they need?</p> <p>11 A. I don't remember the exact time. It was</p> <p>12 about -- it was about 15 minutes. I think the way</p> <p>13 they did it was they picked a quarter hour, the</p> <p>14 next closest quarter hour time period. So I</p> <p>15 couldn't -- I can give you a type of example. I</p> <p>16 don't remember the exact time. But it was, for</p> <p>17 example, if it was -- if the press conference was</p> <p>18 over at 9:17, they picked 9:30. So they picked a</p> <p>19 round, a relatively round time that they could all</p> <p>20 agree on.</p> <p>21 Q. And when you say you polled the reporters,</p> <p>22 did you have them take a vote?</p> | <p style="text-align: right;">Page 73</p> <p>1 A. I presume the same. Besides from the</p> <p>2 conversations I had with a number of people, a</p> <p>3 number of reporters in that group, the same way I</p> <p>4 presume that you know how to conduct a deposition</p> <p>5 interview. You know, I've witnessed it with other</p> <p>6 documents, and I can see that -- you know, that</p> <p>7 wasn't the first time that we had used an embargo.</p> <p>8 We used embargoes on a relatively regular daily</p> <p>9 basis well up to October 31st. It wasn't like it</p> <p>10 was an episodic event. We used embargoes many</p> <p>11 times on a daily basis and sometimes multiple times</p> <p>12 on a given day.</p> <p>13 Q. But at that point with refunding</p> <p>14 conferences, other than setting a time, nobody</p> <p>15 defined for the reporters, both veteran and</p> <p>16 nonveteran reporters, what they could and couldn't</p> <p>17 do during the embargo?</p> <p>18 MS. WILLIAMS: Objection.</p> <p>19 A. That's right. No one defined it.</p> <p>20 BY MR. THEODOROU:</p> <p>21 Q. And nobody --</p> <p>22 A. And if you're asking me why I didn't define</p> |

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| <p style="text-align: right;">Page 74</p> <p>1 <b>it, I saw no reason to.</b></p> <p>2 Q. You assume they understood?</p> <p>3 MS. WILLIAMS: Objection.</p> <p>4 <b>A. I had good reason to assume that they</b></p> <p>5 <b>understood.</b></p> <p>6 <b>BY MR. THEODOROU:</b></p> <p>7 Q. Okay. Let me rephrase my question.</p> <p>8 Do you know whether anyone at that May</p> <p>9 conference told the reporters in the room what they</p> <p>10 could and could not do during the embargo period?</p> <p>11 <b>A. No.</b></p> <p>12 Q. Do you know -- now, you testified earlier</p> <p>13 about Simon Kennedy. Who is he again?</p> <p>14 <b>A. At the time, he was a reporter with Bridge</b></p> <p>15 <b>News.</b></p> <p>16 Q. And do you recall having a discussion about</p> <p>17 embargoes with Simon Kennedy, specifically with Mr.</p> <p>18 Kennedy, as opposed to those two to three meetings</p> <p>19 you talked about?</p> <p>20 <b>A. Yes.</b></p> <p>21 Q. Before October 31, 2001, do you recall</p> <p>22 having a discussion with Mr. Kennedy about the use</p>   | <p style="text-align: right;">Page 76</p> <p>1 Q. Now, before the quarterly refunding press</p> <p>2 conference of October 31st, 2001, did Treasury</p> <p>3 require attendees at press conferences to stay in</p> <p>4 the room during the embargo period?</p> <p>5 MS. WILLIAMS: Objection.</p> <p>6 <b>A. I don't recall it being an issue.</b></p> <p>7 MS. WILLIAMS: I'm sorry, could we repeat</p> <p>8 the question?</p> <p>9 MR. THEODOROU: Do you want me to restate</p> <p>10 the question?</p> <p>11 MS. WILLIAMS: Yes. Could you restate the</p> <p>12 question?</p> <p>13 <b>BY MR. THEODOROU:</b></p> <p>14 Q. Before the October 31st, 2001 quarterly</p> <p>15 refunding conference, did Treasury require those</p> <p>16 attending the press conference, any press</p> <p>17 conference, to stay in the room where the press</p> <p>18 conference was being conducted during the embargo</p> <p>19 period?</p> <p>20 <b>A. And I responded, I don't recall it being an</b></p> <p>21 <b>issue that was specific, that ever came up.</b></p> <p>22 Q. I just have to rephrase the question.</p>                                  |
| <p style="text-align: right;">Page 75</p> <p>1 of embargoes?</p> <p>2 <b>A. Yes.</b></p> <p>3 Q. Okay. How many discussions did you have</p> <p>4 with him about the use of embargoes?</p> <p>5 <b>A. I don't know if it was more than one.</b></p> <p>6 Q. What do you recall about your discussions</p> <p>7 with Mr. Kennedy?</p> <p>8 <b>A. They were similar to the other conversations</b></p> <p>9 <b>I had in the Treasury pressroom; just asking his</b></p> <p>10 <b>experience with the nature of embargoes, whether --</b></p> <p>11 <b>surveying lots of views on that particular practice</b></p> <p>12 <b>and other ways that we interacted with the Treasury</b></p> <p>13 <b>press corps.</b></p> <p>14 Q. Let me ask you this. Specifically with your</p> <p>15 discussion with Mr. Kennedy, what do you remember</p> <p>16 about the specifics of the discussion regarding</p> <p>17 embargoes, with just that specific discussion?</p> <p>18 <b>A. Yeah. I don't really remember a specific --</b></p> <p>19 <b>his specific reactions. I think I would have</b></p> <p>20 <b>remembered if he had expressed views that differed</b></p> <p>21 <b>from mine. But I don't -- I couldn't tell you the</b></p> <p>22 <b>words he used.</b></p> | <p style="text-align: right;">Page 77</p> <p>1 MS. WILLIAMS: Thank you.</p> <p>2 MR. THEODOROU: You're welcome.</p> <p>3 THE WITNESS: And your objection on the</p> <p>4 second retelling of the question?</p> <p>5 MS. WILLIAMS: No, I have no objection.</p> <p>6 MR. THEODOROU: She's all set. She never</p> <p>7 has a problem with objections.</p> <p>8 <b>BY MR. THEODOROU:</b></p> <p>9 Q. Before October 31st, 2001, did Treasury take</p> <p>10 any steps to prevent attendees of news conferences</p> <p>11 from making telephone calls before the embargo</p> <p>12 period ended?</p> <p>13 MS. WILLIAMS: Objection.</p> <p>14 <b>A. Yes. If there was an embargo in effect,</b></p> <p>15 <b>reporters are not permitted to use their cell</b></p> <p>16 <b>phones. And, in fact, we enforced the policy even</b></p> <p>17 <b>for open events of discouraging the use of cell</b></p> <p>18 <b>phones during events where there wasn't an embargo.</b></p> <p>19 <b>BY MR. THEODOROU:</b></p> <p>20 Q. Well, how were they allowed to communicate</p> <p>21 with their press organizations during the embargo</p> <p>22 period?</p> |

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| <p style="text-align: right;">Page 78</p> <p>1 A. Well, during the embargo period, they were<br/> 2 in there, they would be in the Treasury pressroom<br/> 3 or on the way to the Treasury pressroom. But<br/> 4 you're talking about during the event itself or<br/> 5 just during the embargo period? Maybe I<br/> 6 misunderstood your question.<br/> 7 Q. Let me clarify that. During the embargo<br/> 8 period.<br/> 9 A. Yes, absolutely, they can get on their cell<br/> 10 phones.<br/> 11 Q. And they were allowed to communicate with<br/> 12 their press organizations?<br/> 13 A. Yeah. But part of the embargo period for an<br/> 14 event with a set embargo might include a period of<br/> 15 time of the event itself. So if it's a press<br/> 16 conference or a speech, we wouldn't allow reporters<br/> 17 to get on the phone. And we would and have noted<br/> 18 on a number of occasions. In fact, I recall one<br/> 19 news organization in particular that made it a<br/> 20 chronic -- it was a chronic thing with them that we<br/> 21 noted our displeasure with them. Not during an<br/> 22 embargo period, during open press events. No one,</p> | <p style="text-align: right;">Page 80</p> <p>1 the people present understood that their access to<br/> 2 the information was conditioned on their agreement<br/> 3 not to distribute it publicly before 10:00 a.m.<br/> 4 Do you see that?<br/> 5 A. Yes.<br/> 6 Q. And it also continues: But reporters and<br/> 7 others who attended were not required to remain in<br/> 8 the room until the embargo expired.<br/> 9 It also states: The reporters, many of whom<br/> 10 work regularly in the building's pressroom, left to<br/> 11 prepare stories to be sent to their media outlets<br/> 12 and released at 10:00 a.m.<br/> 13 Do you see that paragraph?<br/> 14 A. Yes, I do.<br/> 15 Q. The next paragraph states: That procedure<br/> 16 was far more casual, for instance, than that<br/> 17 followed regularly at Treasury when the results of<br/> 18 securities auctions are announced. In such cases,<br/> 19 reporters are given the information ahead of time<br/> 20 so they can prepare stories, but they are kept in<br/> 21 the pressroom until the release time when they are<br/> 22 all allowed to send their stories out</p> |
| <p style="text-align: right;">Page 79</p> <p>1 to my knowledge, did it during an embargo, during<br/> 2 the event itself. But, yes, during an embargo<br/> 3 period, yes.<br/> 4 (FRATTO Exhibit Number 3 was marked for<br/> 5 identification.)<br/> 6 BY MR. THEODOROU:<br/> 7 Q. Mr. Fratto, I'm showing you what's been<br/> 8 marked as Exhibit 3. Have you seen this before, a<br/> 9 Washington Post article that's entitled Treasury<br/> 10 Suspects Insider Bond Trading?<br/> 11 A. I'm sorry?<br/> 12 Q. Have you seen this article before? Do you<br/> 13 recall seeing this article, November 6th?<br/> 14 A. Yeah. It's been a long time, but I do.<br/> 15 Q. Why don't you take a look through it.<br/> 16 A. Okay.<br/> 17 Q. I want to direct your attention to the<br/> 18 middle of the first page. Do you see where it<br/> 19 says: Treasury officials announced both before and<br/> 20 at the end of the news conference that Fisher's<br/> 21 statement and his replies to reporters' questions<br/> 22 were embargoed for release at 10:00 a.m., meaning</p>  | <p style="text-align: right;">Page 81</p> <p>1 simultaneously.<br/> 2 Do you see that paragraph?<br/> 3 A. I do.<br/> 4 Q. Now, how did the procedures for the<br/> 5 quarterly refunding announcements compare to the<br/> 6 procedures used for announcing the results of<br/> 7 securities auctions?<br/> 8 A. Well, the results of the securities auctions<br/> 9 are delivered directly to the Treasury pressroom by<br/> 10 way of fax, similar to the way the statement of the<br/> 11 FOMC committee is sent of directly to the Treasury<br/> 12 pressroom.<br/> 13 But I would -- while I wouldn't disagree<br/> 14 that the procedure is, as the reporter noted, more<br/> 15 casual than how we handle securities auctions, how<br/> 16 securities auctions are announced, they are not --<br/> 17 they do not differ in any way from how we employ<br/> 18 embargoes in lots of other ways within the Treasury<br/> 19 Building.<br/> 20 Q. Well, why were they locked down for<br/> 21 securities auctions and not for the quarterly<br/> 22 refunding announcement?</p>  |

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| <p>1 A. Because the quarterly refunding<br/>2 announcement, the way it had always been done, the<br/>3 way it had always been released was in the form of<br/>4 a press conference. And a press conference can<br/>5 cannot be held in the Treasury pressroom, and the<br/>6 reporters are not -- don't have the capability of<br/>7 disseminating and producing the news from the<br/>8 diplomatic reception room which we used at that<br/>9 time for press conferences. So the only way to<br/>10 allow the Treasury reporters to get to a place<br/>11 where, A, where we can have a place to conduct our<br/>12 press conference, and point B, where they can<br/>13 produce their stories and disseminate it is to<br/>14 allow them to walk from point A to point B.<br/>15 Q. Right. So they were allowed to go to their<br/>16 pressroom during the embargo time. Correct?<br/>17 A. Correct.<br/>18 Q. And to contact their media organizations?<br/>19 A. Correct.<br/>20 Q. Why weren't they locked down in their<br/>21 pressroom? If they were there with the written<br/>22 statement that they were writing their stories</p>   | <p>1 Treasury pressroom. And in order for them to<br/>2 disseminate the news of an auction or an FOMC<br/>3 statement, they had to allow the reporters or the<br/>4 reporters had developed the custom of doing<br/>5 something, you know, which someone might look at as<br/>6 unusual but it was relatively safe, which was<br/>7 allowed to walk across the hall with an FOMC<br/>8 statement, two reporters keeping an eye on each<br/>9 other and making copies of the FOMC statement and<br/>10 walking back into the Treasury pressroom. That was<br/>11 even under a lockdown condition they were leaving<br/>12 the room with a key document, but they were<br/>13 self-enforcing.<br/>14 You know, reporters do not want to break<br/>15 embargoes. That's the quickest way to find<br/>16 yourself off one of the best beats in Washington,<br/>17 is to try to -- is to break an embargo willfully.<br/>18 Q. What is a securities auction?<br/>19 A. Treasury bonds, notes. You know, the<br/>20 Treasury securities bonds that we sell, they are<br/>21 auctioned at the Bureau of Engraving and Print --<br/>22 I'm sorry, the Bureau of Public Debt. And they are</p> |
| Page 83   | Page 85   |
| <p>1 about, why weren't they locked down while they were<br/>2 locked down in these securities auctions?<br/>3 A. There was no need to. There was not -- to<br/>4 my knowledge, speaking to people both reporters who<br/>5 dealt with it in the past and public affairs<br/>6 officials at Treasury, they had never had a problem<br/>7 of broken embargoes. My experience at that point,<br/>8 which was eight or nine months, or seven or eight<br/>9 months at Treasury had not had experience with<br/>10 broken embargoes; and, that this was relatively<br/>11 customary and usual for the way we did lots of<br/>12 briefings that involved embargoes.<br/>13 Q. Right. But why did you have to lock them<br/>14 down in the securities auctions?<br/>15 A. That was the way they did it. That's the<br/>16 way it had been done at Treasury, that they did a<br/>17 lockdown for securities auctions. But I will tell<br/>18 you, even out of -- you know, at the time, even for<br/>19 securities auctions and for FOMC statements, you<br/>20 know, we work in a unique place where the<br/>21 facilities have not kept up with what they needed.<br/>22 So, for example, there wasn't a copier in the</p> | <p>1 electronic auctions. And the results of those<br/>2 auctions are disseminated in the Treasury<br/>3 pressroom.<br/>4 Q. As to who bought?<br/>5 A. How many were bought, what the, you know,<br/>6 the price, how much, at what price.<br/>7 Q. The materials?<br/>8 A. Exactly. How did the -- what were the<br/>9 results of the sale.<br/>10 Q. So that information was certainly as market<br/>11 sensitive as what was going on at the quarterly<br/>12 refunding conference. Correct?<br/>13 MS. WILLIAMS: Objection.<br/>14 A. I couldn't compare. In fact, I don't think<br/>15 I'm qualified to say which is more or less market<br/>16 sensitive.<br/>17 BY MR. THEODOROU:<br/>18 Q. Were they both market sensitive, though?<br/>19 A. Yeah. I would call them both market<br/>20 sensitive.<br/>21 Q. Did Treasury use a lockdown procedure for<br/>22 any other kinds of press conferences other than --</p>  |

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| <p style="text-align: right;">Page 86</p> <p>1 or, excuse me. Did Treasury use any lockdown<br/>2 procedures outside of the auctions?<br/>3 <b>A. I'm only aware of it for auctions and for<br/>4 FOMC statements.</b><br/>5 Q. And what are FOMC statements?<br/>6 <b>A. There are six policy-making meetings of the<br/>7 Federal Open Market Committee, which is a committee<br/>8 of those that includes the chairman of the Federal<br/>9 Reserve Board, the permanent members of the Federal<br/>10 Reserve Board, and the rotating group of Federal<br/>11 Reserve bank presidents. They meet six times<br/>12 throughout the year, and they announce what the<br/>13 overnight -- the rate for overnight borrowing<br/>14 between banks will be, which is known as the<br/>15 Federal funds rate. They announce what that rate<br/>16 will be. And that affects interest rates for lots<br/>17 of -- for all bond market activity.</b><br/>18 Q. And how does the press get the FOMC<br/>19 statements?<br/>20 <b>A. The Federal Reserve Board faxes the Federal<br/>21 Reserve Board statement to the Dow Jones fax<br/>22 machine in the Treasury pressroom. A Dow Jones</b></p> | <p style="text-align: right;">Page 88</p> <p>1 <b>A. Correct.</b><br/>2 Q. So my question is, why was there a lockdown<br/>3 when they went back to the pressroom to do that<br/>4 with the refunding conferences?<br/>5 <b>A. It just wasn't necessary. They had one goal<br/>6 in mind, and that was to get to their desks,<br/>7 produce their stories. They weren't looking to go<br/>8 anywhere else.</b><br/>9 Q. And when they got the information from the<br/>10 FOMC statements and the securities auction<br/>11 information, they also were at their desks in the<br/>12 pressroom writing their stories and contacting<br/>13 their organizations. Correct?<br/>14 <b>A. Um-hmm.</b><br/>15 Q. And yet they were not allowed to leave.<br/>16 Right?<br/>17 MS. WILLIAMS: Objection.<br/>18 <b>A. Let me be clear on this. Treasury does not<br/>19 enforce the lockdowns in the Treasury pressroom.<br/>20 All the lockdowns, including the FOMC lockdowns,<br/>21 are self-enforcing by the reporters. We do not<br/>22 tell them how to conduct their lockdowns. We don't</b></p>  |
| <p style="text-align: right;">Page 87</p> <p>1 <b>reporter plus one other reporter will take that<br/>2 document and walk it to the copy machine and make<br/>3 sufficient copies for the entire pressroom, and<br/>4 then distribute those documents in the pressroom.<br/>5 At that point, the room has three minutes to write<br/>6 their stories and disseminate it.</b><br/>7 Q. And there's a lockdown procedure in place?<br/>8 <b>A. There's a lockdown procedure in place.<br/>9 Meaning that they can't leave the room.</b><br/>10 Q. And why is there a lockdown procedure in<br/>11 that case, as opposed to when they go in there with<br/>12 their refunding information?<br/>13 MS. WILLIAMS: Objection.<br/>14 <b>A. They are not getting the refunding -- at<br/>15 that time, they were not getting the refunding<br/>16 information in the pressroom.</b><br/>17 <b>BY MR. THEODOROU:</b><br/>18 Q. Right. But you testified earlier that they<br/>19 leave the refunding conferences, and during the<br/>20 embargo time they can go back to their offices,<br/>21 write their stories, and contact their<br/>22 organizations. Correct?</p>                           | <p style="text-align: right;">Page 89</p> <p>1 oversee their lockdowns. They are responsible for<br/>2 conducting their lockdowns, even for the FOMC<br/>3 announcements and for the Treasury auction<br/>4 announcements.<br/>5 <b>BY MR. THEODOROU:</b><br/>6 Q. Right. But for the FOMC announcement and<br/>7 the auction announcement, do you require -- did<br/>8 Treasury, before October 31, 2001, require a<br/>9 lockdown?<br/>10 <b>A. Did we require a lockdown for the FOMC? No.<br/>11 Like I said, we don't -- we don't set the policy on<br/>12 lockdowns in the Treasury pressroom. It is<br/>13 self-enforcing. And, technically speaking, that's<br/>14 not Treasury's announcement. That FOMC<br/>15 announcement is not a Treasury announcement.</b><br/>16 <b>Now, it's possible that the Federal Reserve<br/>17 Board -- and you contact Michelle Smith and ask<br/>18 her -- whether they require a lockdown in the<br/>19 Treasury pressroom for their announcements. But we<br/>20 don't require it. And no one from the Federal<br/>21 Reserve Board is there in the room overseeing the<br/>22 lockdown.</b></p> |

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| <p>1 Q. Did Treasury require a lockdown for the</p> <p>2 security auction?</p> <p>3 A. No.</p> <p>4 Q. They did not?</p> <p>5 A. No.</p> <p>6 Q. So that's something that the press came up</p> <p>7 with?</p> <p>8 A. Yes. You know, when I say "no," I never</p> <p>9 required it; it was never required while I worked</p> <p>10 at Treasury. Whether there was some legacy of some</p> <p>11 previous Treasury official that did require it back</p> <p>12 at the origins of it, I suppose that's possible.</p> <p>13 But I don't have any knowledge of it.</p> <p>14 Q. And as of October 31, 2001, were you at that</p> <p>15 time aware of any policy that required a lockdown</p> <p>16 for the securities?</p> <p>17 A. No.</p> <p>18 (FRATTO Exhibit Number 4 was marked for</p> <p>19 identification.)</p> <p>20 BY MR. THEODOROU:</p> <p>21 Q. I want to show you, Mr. Fratto, Exhibit 4.</p> <p>22 Have you seen this document before?</p>   | <p>1 A. I do.</p> <p>2 Q. And you attended the May 2nd but not the</p> <p>3 August 1st, 2001 announcement?</p> <p>4 MS. WILLIAMS: Objection.</p> <p>5 A. I'm sorry. Actually, what I said is I don't</p> <p>6 recall attending the August one. Let me -- if I</p> <p>7 could just put some context in that.</p> <p>8 Brian Roseborough I think did a few</p> <p>9 quarterly refunding announcements, so I don't</p> <p>10 remember. You know, I have a picture in my head of</p> <p>11 Brian doing a quarterly funding announcement. I</p> <p>12 have no idea whether it was the August 2nd or some</p> <p>13 subsequent one that he did, or August 1st.</p> <p>14 BY MR. THEODOROU:</p> <p>15 Q. But you do recall attending the May one?</p> <p>16 A. Yeah. That one I remember very well,</p> <p>17 because it was the first one that I had done.</p> <p>18 Q. If you look, the second paragraph of the</p> <p>19 letter, of the March 4th, 2002 letter. All right?</p> <p>20 A. Yes.</p> <p>21 Q. He states in here that: I forwarded your</p> <p>22 request to Tony Fratto, director of the Office of</p>             |
| Page 91   | Page 93  |
| <p>1 A. I might have. I honestly really don't</p> <p>2 remember. I think, I remember having a</p> <p>3 conversation with John Vardaman about this. So</p> <p>4 it's possible that he showed it to me, but I</p> <p>5 honestly don't remember it.</p> <p>6 Q. There are actually two letters, one from</p> <p>7 March 4th, 2002, and one from April 5th, 2002, from</p> <p>8 John Vardaman to Rosemary Filou at the SEC. Do you</p> <p>9 see that?</p> <p>10 A. Yes.</p> <p>11 Q. Did the SEC lawyer show you this document at</p> <p>12 all?</p> <p>13 A. Not yesterday. And I don't think I saw this</p> <p>14 in our previous conversation.</p> <p>15 Q. Do you want to take some time to look at the</p> <p>16 letters?</p> <p>17 A. Okay.</p> <p>18 Q. Okay. Now, the letters, if you look at the</p> <p>19 first paragraph of each letter, the letters refer</p> <p>20 to information that Ms. Filou wanted regarding the</p> <p>21 May 2nd, 2001 and the August 1st, 2001 quarterly</p> <p>22 refunding announcements. Do you see that?</p> | <p>1 Public Affairs, who was responsible for announcing</p> <p>2 the embargo, both the May 2nd, 2001 and August 1st,</p> <p>3 2001 quarterly refunding announcements.</p> <p>4 Do you see that?</p> <p>5 A. I do.</p> <p>6 Q. Now, does that refresh your recollection as</p> <p>7 to whether you attended on August 1st, 2001?</p> <p>8 A. I don't dispute it. But I honestly don't</p> <p>9 really have a very good recollection of that, of</p> <p>10 that announcement.</p> <p>11 Q. Now, if you would go further down in that</p> <p>12 paragraph, it states: As is the custom, Mr. Fratto</p> <p>13 orally issued a 15- to 20-minute embargo at the</p> <p>14 conclusion of the news conference following both</p> <p>15 announcements.</p> <p>16 Is that what happened?</p> <p>17 A. Like I said, I have a fairly good</p> <p>18 recollection of doing that with communication with</p> <p>19 the reporters present at the May 2nd one, but I</p> <p>20 don't really remember the August 1st one.</p> <p>21 Q. Okay. And what does a 15- to 20-minute</p> <p>22 embargo mean? Does that mean the period of time</p> |

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|---|---|
| <p style="text-align: right;">Page 94</p> <p>1 that they can write the stories or contact?</p> <p>2 MS. WILLIAMS: Objection.</p> <p>3 BY MR. THEODOROU:</p> <p>4 Q. Well, I will ask you. What did that mean, a</p> <p>5 15- to 20-minute embargo?</p> <p>6 A. I'm not sure what John Vardaman's -- what</p> <p>7 exactly he's writing. I would suspect that John</p> <p>8 asked me what kind of embargo was set for one or</p> <p>9 both of those news conferences, and I said it was,</p> <p>10 you know, 15 -- it would be around 15 or 20</p> <p>11 minutes.</p> <p>12 Q. So was the October 31st, 2001 press</p> <p>13 conference, quarterly refunding press conference,</p> <p>14 was that the first time to your knowledge in which</p> <p>15 an embargo time was printed on a document ahead of</p> <p>16 time?</p> <p>17 A. Yes. To my knowledge, yeah.</p> <p>18 MS. WILLIAMS: Objection.</p> <p>19 A. I'm sorry. For a quarterly refunding</p> <p>20 announcement.</p> <p>21 BY MR. THEODOROU:</p> <p>22 Q. Correct.</p> | <p style="text-align: right;">Page 96</p> <p>1 that.</p> <p>2 All right. It states -- if you look at that</p> <p>3 second letter, Vardaman states. Do you see that,</p> <p>4 the second paragraph?</p> <p>5 A. Yeah.</p> <p>6 Q. States that the May -- at the conclusion of</p> <p>7 the press conference on May 2nd, Tony Fratto,</p> <p>8 director of the Office of Public Affairs, announced</p> <p>9 that an embargo was in effect until approximately</p> <p>10 9:45 a.m.</p> <p>11 All right. Do you see that?</p> <p>12 A. Yes.</p> <p>13 Q. All right. Now, it says until approximately</p> <p>14 a certain time. Now, what does he base</p> <p>15 "approximately" on?</p> <p>16 MS. WILLIAMS: Objection.</p> <p>17 BY MR. THEODOROU:</p> <p>18 Q. To your knowledge.</p> <p>19 A. To my knowledge -- I'm sure John was</p> <p>20 responding to my answer to him at the time, and I</p> <p>21 am sure that I used the word approximately because</p> <p>22 I didn't know the specific time that Peter Fisher's</p>   |
| <p style="text-align: right;">Page 95</p> <p>1 A. But we have had pre-set embargoes for other</p> <p>2 kinds of documents.</p> <p>3 Q. Right. So the October 31st, 2001 press</p> <p>4 conference was the first time that Treasury had</p> <p>5 issued documents ahead of time noting an embargo</p> <p>6 time for a quarterly press conference, to your</p> <p>7 knowledge?</p> <p>8 A. Yes. That's correct.</p> <p>9 Q. Now, in the second letter attached to</p> <p>10 Exhibit 4, Mr. Vardaman -- and, by the way, who is</p> <p>11 Mr. Vardaman?</p> <p>12 A. I know John worked in the general counsel's</p> <p>13 office.</p> <p>14 Q. As a special assistant to the general</p> <p>15 counsel?</p> <p>16 A. Yeah.</p> <p>17 Q. Is he a lawyer?</p> <p>18 A. He is an attorney. I don't know whether --</p> <p>19 I know John went off to Iraq for a while and did</p> <p>20 some work there. I don't know if he ever came</p> <p>21 back.</p> <p>22 Q. I'm not following up on any questions on</p>                          | <p style="text-align: right;">Page 97</p> <p>1 statement was posted to the Web site. And the</p> <p>2 moment that Peter Fisher's statement was posted to</p> <p>3 the Web site, the embargo was lifted.</p> <p>4 MS. WILLIAMS: Just to clarify, are we</p> <p>5 talking about the May 2nd?</p> <p>6 MR. THEODOROU: Yeah, the May 2nd.</p> <p>7 A. I'm sorry. I thought we were talking about</p> <p>8 October 31st.</p> <p>9 BY MR. THEODOROU:</p> <p>10 Q. No, not October 31st. To be clear, let me</p> <p>11 ask again. Okay? Look at that whole paragraph.</p> <p>12 The paragraph states: To be clear, at the</p> <p>13 conclusion of the press conference on May 2nd, Tony</p> <p>14 Fratto, director of Office of Public Affairs,</p> <p>15 announced that an embargo was in effect until 9:45</p> <p>16 a.m.</p> <p>17 A. Yeah.</p> <p>18 Q. Do you see that?</p> <p>19 A. Sorry about that.</p> <p>20 Q. The second sentence was: At the conclusion</p> <p>21 of the press conference on August 1st, Mr. Fratto</p> <p>22 announced an embargo was in effect until</p> |

25 (Pages 94 to 97)

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1 approximately 9:30.

2 Correct? Do you see that?

3 A. That's what it says. Yeah.

4 Q. And what did he base his statement that it  
5 was approximately 9:45 for May 2nd and  
6 approximately 9:50 for August 1st?

7 MS. WILLIAMS: Objection.

8 A. I'm sure John asked me, and my answer to him  
9 was approximately.

10 BY MR. THEODOROU:

11 Q. So at these quarterly refunding conferences,  
12 though, these two, May 2nd and August 1, there was  
13 no fixed time at which the embargo expired.  
14 Correct?

15 MS. WILLIAMS: Objection.

16 A. Yes. I think we stated that.

17 BY MR. THEODOROU:

18 Q. Okay. Now, if you look at the first letter  
19 where it states: As is the custom, Mr. Fratto  
20 orally issued a 15- to 20-minute embargo at the  
21 conclusion of the news conference following both  
22 announcements.

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1 Do you see that?

2 A. I do.

3 Q. So if it was 15 to 20 minutes, how did the  
4 attendees know exactly when they were allowed to  
5 disclose the information publicly?6 A. Because when we would establish the  
7 approximate time needed for an embargo, that would  
8 then be followed up with, okay, we agree that's  
9 then a specific time. So a specific time would  
10 have been orally discussed with the group of  
11 reporters attending the event.12 So you talk about, first, how much time do  
13 the reporters need to produce their stories.  
14 Sometimes it's as few as three to five minutes,  
15 sometimes on something more complex they will  
16 request upwards of 15 to 20 minutes. And once you  
17 establish how much time the reporters need to  
18 produce their stories, then you fix a time that is  
19 relatively close to the time that they request to  
20 produce their stories.21 Q. Well, you remember you talked to Mr.  
22 Vardaman?

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1 A. I remember talking to Mr. Vardaman. I don't  
2 remember what all we talked about.3 Q. Do you see where Mr. Vardaman in the first  
4 letter says: Accordingly, the May 2nd embargo was  
5 in effect from approximately 9:25 until 9:45. And  
6 the August 1st embargo was from 9:30 until 9:50.7 A. Yeah. I know that that's not perfectly  
8 accurate, because an embargo period begins at the  
9 beginning of the event, not -- you know, not at the  
10 conclusion of an event. The embargo begins from  
11 the -- the embargo begins from the first moment  
12 that information is disseminated. So if they were  
13 handed paper or the principal was speaking, that's  
14 when the embargo begins. So you would announce  
15 before the event that this information is  
16 embargoed.17 Q. Is there a record anywhere of a set embargo  
18 time after you discussed it with the attendees of  
19 those quarterly refunding conferences of what the  
20 set embargo time was?21 A. Not to my knowledge. It's likely that I  
22 would have noted it on paper somewhere, but nothing

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1 that I would have retained.

2 Q. Because I notice that -- I mean, is Vardaman  
3 a pretty careful lawyer?

4 MS. WILLIAMS: Objection.

5 MR. THEODOROU:

6 A. To your knowledge, pretty careful what he  
7 does?

8 MS. WILLIAMS: Objection.

9 A. I don't know John well enough in terms of  
10 his lawyering skills. I would leave that to other  
11 experts.

12 BY MR. THEODOROU:

13 Q. But you notice he uses the term  
14 "approximately" a few times. Is that right?

15 A. He uses it on numerous times. Yeah.

16 Q. And these letters are based on discussions  
17 with you?

18 A. Um-hmm.

19 Q. Correct?

20 A. Yes.

21 Q. Okay. And you understood, during the course  
22 of this investigation, after October 31, after the

26 (Pages 98 to 101)

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|   |   |
|---|---|
| <p style="text-align: right;">Page 102</p> <p>1 events of October 31, how important it was to be as<br/>2 precise as possible --<br/>3 <b>A. That's right.</b><br/>4 Q. -- in talking to OIG and lawyers for the<br/>5 Treasury and the SEC?<br/>6 <b>A. Yes, I do. And I'm sure John's response is</b><br/>7 <b>reflective of the fact that he was asking me about</b><br/>8 <b>events that occurred upwards of a year previously.</b><br/>9 <b>So my ability to recall specific times a year or</b><br/>10 <b>five months later is probably limited, just as</b><br/>11 <b>limited as it is now.</b><br/>12 Q. Now, you testified you do remember being at<br/>13 the August 1st -- or the May 2nd conference, but<br/>14 not the August 1st. Right?<br/>15 <b>A. Yeah.</b><br/>16 Q. But at the May 2nd conference, did you tell<br/>17 the attendees that the embargo would last 15<br/>18 minutes from a certain time, or did you announce an<br/>19 exact time at which it would end?<br/>20 <b>A. I announced an exact time.</b><br/>21 Q. Do you recall today what that exact time<br/>22 was?</p>  | <p style="text-align: right;">Page 104</p> <p>1 <b>A. Yeah.</b><br/>2 Q. The whole paragraph.<br/>3 Fratto said that this was the first time<br/>4 they had set an embargo 10:00 a.m. prior to the<br/>5 conference. Normally they poll the press at the<br/>6 conclusion of the press conference and then set the<br/>7 embargo time. He said he was not aware of any<br/>8 member of the press violating the embargo. He said<br/>9 that, if they did, he would revoke their Treasury<br/>10 press credentials.<br/>11 Do you remember talking to the OIG and the<br/>12 SEC about that?<br/>13 <b>A. Yes.</b><br/>14 Q. How did Treasury enforce embargoes at their<br/>15 refunding conferences, refunding press conferences?<br/>16 <b>A. That's a more complicated question and more</b><br/>17 <b>complicated answer than what I think you are</b><br/>18 <b>asking. You are asking how we deal.</b><br/>19 Q. Just like the case. It's a much more<br/>20 complicated case?<br/>21 <b>A. How we deal with reporters who would violate</b><br/>22 <b>a an embargo. Say, first of all, I have no -- I</b></p>   |
| <p style="text-align: right;">Page 103</p> <p>1 <b>A. No.</b><br/>2 Q. Is it written anywhere, that exact time?<br/>3 <b>A. No. But it is standard in -- any time. I</b><br/>4 <b>know of no case where the discussion of the time</b><br/>5 <b>required for an embargo is discussed with reporters</b><br/>6 <b>that isn't followed up by a consensus agreement on</b><br/>7 <b>a specific time. That's always the case.</b><br/>8 Q. And what, is there -- is there to your<br/>9 knowledge a record anywhere of this set time?<br/>10 <b>A. No. I would be surprised to find one.</b><br/>11 Q. Now, if you'd turn to Exhibit 1. Directing<br/>12 your attention to page 2. All right, the fourth<br/>13 paragraph, beginning: Fratto said that this was<br/>14 the first time they had set an embargo time 10:00<br/>15 a.m. prior to the conference.<br/>16 Do you see that, Mr. Fratto?<br/>17 <b>A. I do.</b><br/>18 Q. All right. And then later on in the<br/>19 paragraph you say: He said he was not aware of any<br/>20 member of the press violating the embargo. He said<br/>21 -- let me take it in context for the purpose of<br/>22 completeness here.</p> | <p style="text-align: right;">Page 105</p> <p>1 <b>have had in five and a half years in Treasury no</b><br/>2 <b>instances that I'm aware of a reporter willfully</b><br/>3 <b>violating an embargo. However --</b><br/>4 Q. What do you mean by willfully?<br/>5 <b>A. Doing it on purpose. Purposely violating an</b><br/>6 <b>embargo. I'm aware of one instance, and I honestly</b><br/>7 <b>can't recall what the date was, but it was I</b><br/>8 <b>believe in 2003 where an Associated Press reporter</b><br/>9 <b>had accidentally violated an embargo, or the</b><br/>10 <b>Associated Press news organization had accidentally</b><br/>11 <b>violated an embargo. And that was because the</b><br/>12 <b>reporter, when they sent their story to their</b><br/>13 <b>editor for review, wasn't clear that the story was</b><br/>14 <b>embargoed and so they had -- they accidentally sent</b><br/>15 <b>the story out before the embargo was lifted, and</b><br/>16 <b>they self-reported themselves. They called me, as</b><br/>17 <b>did every other reporter in the pressroom</b><br/>18 <b>subsequent to that. But AP had called me to tell</b><br/>19 <b>me that they had violated the embargo and</b><br/>20 <b>apologized.</b><br/>21 Q. But as of October 31, 2001, how did Treasury<br/>22 enforce its embargoes?</p> |

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| Page 106  | Page 108  |
|---|---|
| <p>1 MS. WILLIAMS: Objection.</p> <p>2 A. It up to that point had not had an</p> <p>3 opportunity to use any of the potential penalties</p> <p>4 at my disposal for someone violating an embargo.</p> <p>5 But I was clear, and I think going back to some of</p> <p>6 the conversations we had with reporters on this</p> <p>7 topic -- and I couldn't tell you specifically which</p> <p>8 reporters that we had this conversation with, but</p> <p>9 it was -- I recall expressing my feeling that if a</p> <p>10 reporter violated an embargo -- first of all, they</p> <p>11 were clear in telling me that they would be sure to</p> <p>12 let me know about it if anyone did because they</p> <p>13 watch each other. But if a reporter violated an</p> <p>14 embargo, that, you know, some of the potential</p> <p>15 penalties that I can use to enforce an embargo</p> <p>16 would be to limit access to that reporter to, you</p> <p>17 know, covering Treasury events, and could revoke</p> <p>18 that reporter's Treasury press credentials and not</p> <p>19 allow them into the Treasury building to cover</p> <p>20 Treasury events. I could even go so far as, if it</p> <p>21 was a news organization that was based in the</p> <p>22 Treasury building, had a permanent Treasury room</p> | <p>1 that. The Treasury -- this is a unique group of</p> <p>2 reporters. I said this earlier and I'm going to</p> <p>3 say it again. They don't want to -- it is career</p> <p>4 threatening to break an embargo. Not just -- it's</p> <p>5 not just a question of what I would do to them,</p> <p>6 it's what their news organizations would do to</p> <p>7 them. You know, none of these news organizations</p> <p>8 would tolerate a reporter who breaks embargoes.</p> <p>9 BY MR. THEODOROU:</p> <p>10 Q. My question is, to your knowledge, did</p> <p>11 anybody at Treasury address everybody attending</p> <p>12 what would happen if the embargo was broken?</p> <p>13 A. No.</p> <p>14 Q. Okay. What steps did you take to ensure</p> <p>15 that everybody who attended the refunding</p> <p>16 conference in May 2001 understood what would happen</p> <p>17 if the embargo was broken? I'm talking about</p> <p>18 everybody. Not one particular person you talked to</p> <p>19 or one discussion or a couple of reporters, but the</p> <p>20 people, everybody attending that conference.</p> <p>21 MS. WILLIAMS: Objection.</p> <p>22 A. I'd take the step of announcing that an</p> |
| Page 107  | Page 109  |
| <p>1 press credentials, to remove the organization from</p> <p>2 the Treasury pressroom. So those were just some of</p> <p>3 the tools that I could use.</p> <p>4 And it says here that I responded that I</p> <p>5 would revoke their Treasury press credentials if I</p> <p>6 found out that a reporters at that press conference</p> <p>7 had broken the embargo. I think that is probably</p> <p>8 accurate. That would have been my reaction.</p> <p>9 BY MR. THEODOROU:</p> <p>10 Q. Directing your attention to the May 1st</p> <p>11 conference, which is the one you remember attending</p> <p>12 before October 31st, how do you ensure that all of</p> <p>13 the attendees of the press conference knew that</p> <p>14 their press credentials were going to be revoked or</p> <p>15 could be revoked if they violated the embargo?</p> <p>16 MS. WILLIAMS: Objection.</p> <p>17 BY MR. THEODOROU:</p> <p>18 Q. Did you tell everybody who attended that day</p> <p>19 what would happen if they did?</p> <p>20 A. No.</p> <p>21 MS. WILLIAMS: Objection.</p> <p>22 A. No. And I saw absolutely no reason to do</p>  | <p>1 embargo -- that an embargo is in effect. And I</p> <p>2 would see it no different than -- I don't see the</p> <p>3 necessity when you put, you know, a speed limit</p> <p>4 sign up on the highway to also state what the</p> <p>5 penalties are for exceeding the speed limit. I</p> <p>6 know what the speed limit is, and reporters know</p> <p>7 what an embargo is.</p> <p>8 BY MR. THEODOROU:</p> <p>9 Q. But there's a record of people, when people</p> <p>10 are driving there's a record that they have driver</p> <p>11 education programs.</p> <p>12 A. Um-hmm.</p> <p>13 Q. In this case, did the reporters get training</p> <p>14 on what the embargoes were about so you knew that</p> <p>15 all reporters, veterans and cub reporters alike,</p> <p>16 understood that?</p> <p>17 MS. WILLIAMS: Objection.</p> <p>18 A. I would consider it -- I would consider it</p> <p>19 on-the-job training. But, again, like I said</p> <p>20 earlier, you're talking about solutions in search</p> <p>21 of a problem. I haven't had a problem prior or</p> <p>22 since of reporters exceeding the speed limit, so to</p>   |

28 (Pages 106 to 109)

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|   |  |
|---|--|
| <p style="text-align: right;">Page 110</p> <p>1 speak, of breaking an embargo. There's absolutely</p> <p>2 no evidence of it. And so I don't -- didn't then</p> <p>3 and I certainly don't today see the need at every</p> <p>4 press event where we employ an embargo, which is a</p> <p>5 daily occurrence, to cite the potential penalties</p> <p>6 if the embargo is broken.</p> <p>7 <b>BY MR. THEODOROU:</b></p> <p>8 Q. Did Treasury obtain the consent from</p> <p>9 everybody attending the conference that they would</p> <p>10 abide by the embargo?</p> <p>11 <b>A. No.</b></p> <p>12 Q. Now, directing your attention to October</p> <p>13 31st, 2001. You attended that refunding</p> <p>14 conference. Correct?</p> <p>15 <b>A. Yes.</b></p> <p>16 Q. Now, did Elizabeth Holahan ask the attendees</p> <p>17 at that press conference whether they agreed to</p> <p>18 honor the 10:00 a.m. embargo that day?</p> <p>19 <b>A. No. She simply announced the embargo time</b></p> <p>20 <b>twice.</b></p> <p>21 Q. Did she require the attendees to sign a form</p> <p>22 stating that or any document that they would honor</p> | <p style="text-align: right;">Page 112</p> <p>1 MS. WILLIAMS: Objection.</p> <p>2 <b>A. Willfully violated. Before October 31st?</b></p> <p>3 No, the only event that I really recall was</p> <p>4 subsequent to October 31st.</p> <p>5 <b>BY MR. THEODOROU:</b></p> <p>6 Q. Apart from willfully, do you remember --</p> <p>7 prior to October 31st, 2001, do you remember any</p> <p>8 instance of a premature disclosure of information</p> <p>9 from a press conference at Treasury?</p> <p>10 MS. WILLIAMS: Objection.</p> <p>11 <b>A. An event was brought to my attention, but I</b></p> <p>12 <b>wasn't -- I didn't have first-hand experience with</b></p> <p>13 <b>it.</b></p> <p>14 <b>BY MR. THEODOROU:</b></p> <p>15 Q. What, so there was an event brought to your</p> <p>16 attention where an embargo had been violated?</p> <p>17 MS. WILLIAMS: Objection.</p> <p>18 <b>A. I couldn't make a judgment whether the</b></p> <p>19 <b>embargo was violated. I was asked -- I think I was</b></p> <p>20 <b>asked yesterday about an event involving our deputy</b></p> <p>21 <b>secretary Ken Dam, and in your letter specific date</b></p> <p>22 <b>referring to October 22nd, it was mentioned. I</b></p> |
| <p style="text-align: right;">Page 111</p> <p>1 an embargo?</p> <p>2 <b>A. No. We relied on their ethical</b></p> <p>3 <b>responsibilities.</b></p> <p>4 Q. So that Treasury officials assumed that the</p> <p>5 attendees would honor whatever embargo time was</p> <p>6 announced. Correct?</p> <p>7 <b>A. Yes.</b></p> <p>8 MS. WILLIAMS: Objection.</p> <p>9 <b>BY MR. THEODOROU:</b></p> <p>10 Q. So as of October 31st, 2001, reporters were</p> <p>11 governed by an honor system not to release</p> <p>12 information before the embargo time expired?</p> <p>13 MS. WILLIAMS: Objection.</p> <p>14 <b>A. Is that an honor system? I don't know.</b></p> <p>15 <b>BY MR. THEODOROU:</b></p> <p>16 Q. But they were self --</p> <p>17 <b>A. They were self-enforcing.</b></p> <p>18 Q. Self-enforcing.</p> <p>19 <b>A. Yeah.</b></p> <p>20 Q. Now, you testified you were not aware of any</p> <p>21 instance before October 31st in which an embargo at</p> <p>22 Treasury was violated?</p>  | <p style="text-align: right;">Page 113</p> <p>1 haven't had any first-hand knowledge or experience</p> <p>2 with that. If I have, I'm just not aware. It</p> <p>3 wasn't an issue area that was in my jurisdiction at</p> <p>4 that time.</p> <p>5 Q. Before the October 31st conference, did the</p> <p>6 issue regarding Mr. Dam's press conference, was</p> <p>7 that brought to your attention?</p> <p>8 <b>A. Before October 31st?</b></p> <p>9 Q. Before October 31st, 2001.</p> <p>10 <b>A. I have no recollection of that.</b></p> <p>11 Q. I will see if it refreshes your</p> <p>12 recollection.</p> <p>13 <b>A. Okay.</b></p> <p>14 Q. If it does, it doesn't.</p> <p>15 MR. THEODOROU: Could we go off the record</p> <p>16 just a second?</p> <p>17 THE VIDEOGRAPHER: Off the record at</p> <p>18 12:46:43.</p> <p>19 (Recess taken.)</p> <p>20 THE VIDEOGRAPHER: On the record at</p> <p>21 1:25:52.</p> <p>22 <b>BY MR. THEODOROU:</b></p>   |

29 (Pages 110 to 113)

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1 Q. Before October 31st, 2001, did you ever  
2 revoke the credentials of any member of the press  
3 for violating an embargo?

4 A. No.

5 Q. Do you know if any Treasury Department  
6 official revoked the credentials of any member of  
7 the press for violating an embargo before October  
8 31st, 2001?

9 A. Only -- unless there was some violation of  
10 law. Only the Office of Public Affairs can do  
11 that. So, I mean, of course it's a building where  
12 you need to go through a security check to get in,  
13 so there are instances where there are some  
14 reporters who can't get cleared in the building.  
15 That's not the same as revoking their credentials,  
16 but they can't get credentials to get in.

17 Q. Before we broke earlier, did you testify  
18 that you were not aware of a situation before  
19 October 31st, 2001, in which market sensitive  
20 information was prematurely released by Treasury?

21 A. I think -- I can't testify to whether it was  
22 market sensitive or not. I don't have any

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1 knowledge of that. It was mentioned yesterday of  
2 this event, and I think I noted it was mentioned in  
3 your letter of the October 22nd date. And I don't  
4 have any memory of that. I don't recall being  
5 informed about it.

6 Q. And this was Kenneth Dam's press conference?

7 A. That's what I was told. Yeah.

8 Q. And you don't recall any of the specifics of  
9 what happened with Kenneth Dam?

10 A. No.

11 Q. All right.

12 A. I didn't handle Ken Dam's press. Rob  
13 Nichols did. And so anything that would have  
14 occurred, he would have dealt with. I wouldn't  
15 have dealt with it.

16 (FRATTO Exhibit Number 5 was marked for  
17 identification.)

18 BY MR. THEODOROU:

19 Q. Let me direct your attention to Exhibit 5,  
20 which we just marked. Mr. Fratto, have you seen  
21 this news story before today?

22 A. I don't remember seeing this before.

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1 Q. Why don't you take a look at it.

2 A. Okay.

3 Okay.

4 Q. Do you recall ever seeing this article?

5 A. I don't remember seeing it. There were lots  
6 of things written.

7 Q. Directing your attention to the last  
8 paragraph of Exhibit 5, do you see that where it  
9 starts off with Barclays' Roberts?

10 A. Yeah.

11 Q. It says Barclays' Roberts recalled a similar  
12 flap earlier this month when the Treasury decided  
13 to flood the market with more ten-year notes to  
14 ease a liquidity log jam caused by failed trades  
15 after the September 11th attacks on Washington and  
16 New York.

17 And then it quotes Mr. Roberts, "when they  
18 did the reopening of the ten-year, there was  
19 advance information on the street. There's advance  
20 information here, and so there are a number of  
21 people on the street who are pretty upset about  
22 it," Roberts said. And when he talks about "here,"

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1 he's referring to the October 31st -- what happened  
2 on October 31st.

3 A. Um-hmm.

4 Q. Do you recall this, were you aware of this  
5 issue on advanced information getting out before  
6 Treasury's intermediate issuance of ten-year notes  
7 on October 4th, 2001?

8 MS. WILLIAMS: Objection.

9 A. I recall -- I recall the fact that we were  
10 reopening the ten-year to deal with this liquidity  
11 situation.

12 BY MR. THEODOROU:

13 Q. So --

14 A. But --

15 Q. I'm sorry.

16 A. Go ahead.

17 Q. So you recall the Treasury was doing an  
18 intermediate issuance of ten-year notes in October  
19 2001?

20 A. Yes. And the reasons for that. And,  
21 actually, I do recall some chatter about, you know,  
22 that some people thought that there was advanced

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| <p>1 notice, that there was -- that some people knew</p> <p>2 about it.</p> <p>3 I should say, though, that, you know, market</p> <p>4 rumors are out there every day. I mean, you can go</p> <p>5 and check Reuters stories today and you will see</p> <p>6 market rumors on something that we may or may not</p> <p>7 be doing.</p> <p>8 Q. And you say you recall chatter of advanced</p> <p>9 information.</p> <p>10 A. After the announcement.</p> <p>11 Q. After the announcement?</p> <p>12 A. Yeah.</p> <p>13 Q. And how did you learn about this chatter?</p> <p>14 A. I think probably just seeing it in stories</p> <p>15 like this.</p> <p>16 Q. Do you know if Treasury did an investigation</p> <p>17 as to whether information was prematurely</p> <p>18 disclosed?</p> <p>19 A. I don't know.</p> <p>20 Q. Do you know whether Treasury changed any of</p> <p>21 its procedures regarding the release of market</p> <p>22 sensitive information after the intermediate</p> | <p>1 Q. And this is a Bloomberg report. Correct?</p> <p>2 A. Yep.</p> <p>3 Q. So it's talking about the events of October</p> <p>4 31st, 2001. Do you want to take a look at the</p> <p>5 document?</p> <p>6 A. Sure.</p> <p>7 Okay.</p> <p>8 Q. Directing your attention to the middle of</p> <p>9 the page where it starts off, the paragraph:</p> <p>10 Treasury officials declined to comment on the early</p> <p>11 release other than to confirm it occurred.</p> <p>12 Do you see that paragraph?</p> <p>13 A. Yes.</p> <p>14 Q. All right. Now, the story deals with the</p> <p>15 events of October 31st. Correct?</p> <p>16 MS. WILLIAMS: Objection.</p> <p>17 A. I think that paragraph refers to October</p> <p>18 31st.</p> <p>19 BY MR. THEODOROU:</p> <p>20 Q. Right. In fact, the lead sentence of the</p> <p>21 story is: The U.S. Treasury Department</p> <p>22 inadvertently leaked the decision to eliminate the</p>   |
| Page 119   | Page 121   |
| <p>1 issuance of the ten-year notes?</p> <p>2 A. Not that I'm aware of.</p> <p>3 (FRATTO Exhibit Number 6 was marked for</p> <p>4 identification.)</p> <p>5 BY MR. THEODOROU:</p> <p>6 Q. Mr. Fratto, I'm showing you what's been</p> <p>7 marked as Exhibit 6. Have you seen this document</p> <p>8 before?</p> <p>9 A. It's the same thing. It's possible that I</p> <p>10 read it at the time, but I don't have any</p> <p>11 recollection of it.</p> <p>12 Q. Was this one of the documents -- do you</p> <p>13 recall whether the SEC showed this to you in your</p> <p>14 meetings?</p> <p>15 A. I'm certain that they did not.</p> <p>16 Q. And the topic at the top says: U.S.</p> <p>17 Treasury Leaks Decision to End 30-Year Bond on Web</p> <p>18 Site.</p> <p>19 Do you see that?</p> <p>20 A. I do see that.</p> <p>21 Q. And the date is October 31st, 2001?</p> <p>22 A. Yep.</p>  | <p>1 30-year bond by posting it on the Treasury Internet</p> <p>2 Web site about 20 minutes ahead of the scheduled</p> <p>3 release time. Correct? The first sentence?</p> <p>4 A. That is what the first sentence says.</p> <p>5 Q. It's the lead sentence?</p> <p>6 A. That's what the lead of the article says.</p> <p>7 Q. All right.</p> <p>8 A. I would object to the word "leak."</p> <p>9 Q. But the first sentence of the article --</p> <p>10 A. That's what it says.</p> <p>11 Q. And that first sentence refers to the events</p> <p>12 of October 31st?</p> <p>13 A. Yes.</p> <p>14 Q. And the date of this Bloomberg article is</p> <p>15 October 31st?</p> <p>16 A. Right.</p> <p>17 Q. And this article came out on -- rather, this</p> <p>18 was issued approximately at 4:53 that day in the</p> <p>19 afternoon on October 31st?</p> <p>20 A. Right.</p> <p>21 Q. Now, if you look at the paragraph I just</p> <p>22 directed your attention to, which says: Treasury</p> |

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| <p style="text-align: right;">Page 122</p> <p>1 officials declined to comment on the early release<br/> 2 other than to confirm it occurred. It was the<br/> 3 second time the Department has posted embargoed<br/> 4 information on the Web site before it was scheduled<br/> 5 to enter the public domain.<br/> 6 Do you see that?<br/> 7 A. Yes.<br/> 8 Q. Then it says: On October 22nd, the Treasury<br/> 9 posted remarks by Deputy Secretary Kenneth Dam<br/> 10 almost an hour before he spoke about the<br/> 11 government's efforts to curb terrorist financing.<br/> 12 Do you see that?<br/> 13 A. I do.<br/> 14 Q. Now, does that refresh your recollection at<br/> 15 all about the incident on October 22nd?<br/> 16 A. Only a bit. Only -- I mean, the only<br/> 17 information it gives me more is that it was on<br/> 18 terrorist financing. But I don't recall firsthand<br/> 19 having dealt with it at all.<br/> 20 Q. So you did not have any involvement in<br/> 21 coordinating that event?<br/> 22 A. None at all.</p>   | <p style="text-align: right;">Page 124</p> <p>1 The pressroom would get it an hour beforehand, and<br/> 2 so they would have an hour to digest the speech and<br/> 3 produce their stories. And the speech would be --<br/> 4 you could do it different ways. You could say<br/> 5 embargoed until a certain specific point in time,<br/> 6 you could say embargoed until the principal begins<br/> 7 to speak, so embargoed until the start of the<br/> 8 event. You know, that's the most usual way of<br/> 9 doing it.<br/> 10 Q. Would someone from your office have<br/> 11 coordinated this event?<br/> 12 A. It would have been Rob. I mean, I don't<br/> 13 know for a fact that he did that, but -- actually,<br/> 14 it's possible that Tasia Skalinos was involved,<br/> 15 too, just noting it involved terrorist financing,<br/> 16 she handled enforcement, so it's possible that<br/> 17 Tasia was involved, also, but I don't have any --<br/> 18 Q. And at the time did Skalinis report to you?<br/> 19 A. She did. Yeah.<br/> 20 Q. It states here that, on October 22nd, the<br/> 21 Treasury posted remarks by Deputy Treasury<br/> 22 Secretary Kenneth Dam almost an hour before he</p> |
| <p style="text-align: right;">Page 123</p> <p>1 Q. And who at Public Affairs was involved with<br/> 2 this event?<br/> 3 A. That would have been Rob Nichols, who -- Rob<br/> 4 Nichols at the time was the deputy assistant<br/> 5 secretary for public affairs. And at that time the<br/> 6 deputy assistant secretary for public affairs<br/> 7 handled all the media relations for the deputy<br/> 8 secretary exclusively, unless he was on vacation or<br/> 9 something.<br/> 10 Q. Other than hearing about this Kenneth Dam<br/> 11 incident yesterday, you don't have any independent<br/> 12 recollection of this incident?<br/> 13 A. No.<br/> 14 Q. So you don't know why Dam's remarks were<br/> 15 subject to an embargo?<br/> 16 A. It's not unusual to have any, to have -- you<br/> 17 know, like I said, all of our documents subject to<br/> 18 some form of embargo. A speech. You know, for a<br/> 19 speech, you would -- here's what's customary and<br/> 20 usual for a speech, is we would give a speech to<br/> 21 the pressroom an hour before. A speech being a<br/> 22 much longer document than, say, a short statement.</p> | <p style="text-align: right;">Page 125</p> <p>1 spoke about the government's efforts to curb<br/> 2 terrorist financing.<br/> 3 Who at Treasury was responsible for putting,<br/> 4 or would have been responsible for putting Mr.<br/> 5 Dam's remarks on the Web site?<br/> 6 A. I can only say most likely it would have<br/> 7 been Frances Anderson. But I don't know that for<br/> 8 certain.<br/> 9 Q. And who was Frances Anderson?<br/> 10 A. She's an administrative staffer in our<br/> 11 office. I think you guys have deposed her already<br/> 12 on this case.<br/> 13 Q. Have you read her testimony?<br/> 14 A. No.<br/> 15 Q. Have you read the testimony of any witnesses<br/> 16 in this case?<br/> 17 A. No.<br/> 18 Q. She's an administrative staffer. And how do<br/> 19 you know she was deposed in this case?<br/> 20 A. How do I know? She told me.<br/> 21 Q. When did she tell you?<br/> 22 A. Whenever it was scheduled.</p>  |

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| <p style="text-align: right;">Page 126</p> <p>1 Q. Because Mrs. Anderson still works under you?</p> <p>2 A. She does. Yeah.</p> <p>3 Q. And as her supervisor she would tell you?</p> <p>4 A. I'm not her direct -- she doesn't directly</p> <p>5 report to me. There are a couple steps. But she</p> <p>6 told me she was going to be deposed for this.</p> <p>7 Q. Did she testify, did she say anything about</p> <p>8 her testimony?</p> <p>9 A. No. I didn't ask her and she didn't tell</p> <p>10 me.</p> <p>11 Q. Now, was she in charge in October of 2001 of</p> <p>12 posting information on the Web site for the press</p> <p>13 office?</p> <p>14 A. Yes.</p> <p>15 Q. So it is likely that she posted Kenneth</p> <p>16 Dam's remarks on the Web site?</p> <p>17 A. Yeah.</p> <p>18 MS. WILLIAMS: Objection.</p> <p>19 A. I would say it's likely. But, like I said,</p> <p>20 repeating, I have no knowledge that she did or</p> <p>21 didn't on that particular day.</p> <p>22 BY MR. THEODOROU:</p> | <p style="text-align: right;">Page 128</p> <p>1 Q. So in this case, what allegedly happened was</p> <p>2 there was a premature release of his speech before</p> <p>3 he gave it.</p> <p>4 MS. WILLIAMS: Objection.</p> <p>5 BY MR. THEODOROU:</p> <p>6 Q. Correct?</p> <p>7 A. That's what I'm told.</p> <p>8 Q. Now, after the October 31st, 2001 refunding</p> <p>9 conference, did Treasury take any steps to change</p> <p>10 its embargo procedures?</p> <p>11 A. We took a step to change how the quarterly</p> <p>12 refunding announcements are carried out.</p> <p>13 Q. All right. Before we get to that, all</p> <p>14 right, did Treasury make any change to its -- you</p> <p>15 testified about how you conducted the May, 2001,</p> <p>16 conference, and you testified about the August 2001</p> <p>17 conference, and you testified about your</p> <p>18 discussions with various reporters. Do you</p> <p>19 remember that?</p> <p>20 A. I do.</p> <p>21 Q. About the embargo. Now, did Treasury make</p> <p>22 any changes to embargo procedures for the October</p> |
| <p style="text-align: right;">Page 127</p> <p>1 Q. Do you know whether an investigation was</p> <p>2 conducted about the Dam incident?</p> <p>3 A. I don't know.</p> <p>4 Q. To your knowledge, did Treasury change its</p> <p>5 embargo procedures after this incident, the Dam</p> <p>6 incident?</p> <p>7 A. Not to my knowledge. No.</p> <p>8 Q. Now, after October 31st, 2001 --</p> <p>9 A. It would have nothing to do with the embargo</p> <p>10 procedures. But.</p> <p>11 Q. Why is that?</p> <p>12 A. Well, an embargo applies to reporters. In</p> <p>13 this case, if this is what happened, it was the</p> <p>14 Treasury Department, you know, releasing</p> <p>15 information, not -- it had nothing to do with</p> <p>16 whether -- of the activities of reporters.</p> <p>17 Q. This was the Treasury Department prematurely</p> <p>18 releasing his speech?</p> <p>19 A. Right.</p> <p>20 MS. WILLIAMS: Objection.</p> <p>21 A. Apparently.</p> <p>22 BY MR. THEODOROU:</p>                      | <p style="text-align: right;">Page 129</p> <p>1 31st, 2001 press conference?</p> <p>2 A. No. Oh, other than to -- in that case, to</p> <p>3 state an embargo time prior to the press</p> <p>4 conference.</p> <p>5 Q. And what was the embargo time that was</p> <p>6 stated?</p> <p>7 A. 10:00 a.m. on October 31st.</p> <p>8 Q. And what time was the press conference</p> <p>9 supposed to start?</p> <p>10 A. It was supposed to start at 9:00 a.m.</p> <p>11 Q. Who at Treasury was responsible for setting</p> <p>12 the embargo time at 10:00 a.m.?</p> <p>13 A. Me.</p> <p>14 Q. And why did you set it at 10:00 a.m. that</p> <p>15 day, rather than going through the polling of the</p> <p>16 reporters?</p> <p>17 A. Because, obviously going into it, once I</p> <p>18 learned that we had a relatively major</p> <p>19 announcement, I had presumed that reporters would</p> <p>20 have -- would, number one, have lots of questions</p> <p>21 and, number two, would want to be especially</p> <p>22 careful of how they reported the news; that this</p>                |

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1 was obviously a unique announcement, and I wanted  
 2 to make sure, A, that they had enough time to, you  
 3 know, ask questions at the press conference,  
 4 thoroughly consume the news that they were getting,  
 5 and write thoughtful -- write thoughtful stories.  
 6 And, if they had any questions -- you know, it's  
 7 not unusual for after a press conference or the  
 8 release of information that the reporters, they get  
 9 down to their desks, they get down to their desk  
 10 and get into writing and they realize they have got  
 11 two or three questions on the news you just gave  
 12 them.

13 In this case, for example, they might ask  
 14 was it -- I mean, it wasn't the case, but, you  
 15 know, had 30-year ever been discontinued before?  
 16 They would want a little historical data to add  
 17 into their stories, things like that. So I wanted  
 18 to make sure going into this that they had enough  
 19 time on this important piece of news to write good  
 20 accurate stories, and so I wanted to make sure they  
 21 got that amount of time.

22 Q. And when did you decide it was going to be

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1 news here. I don't think we should try to be --  
 2 you know, let's not try to break ground everywhere.  
 3 You know, the time to try new things with  
 4 established events like a quarterly press  
 5 conference was not when you have a major piece of  
 6 news because you are just increasing the risk that  
 7 something could go wrong. And I never had a whole  
 8 lot of faith in the ability of Treasury's Internet  
 9 infrastructure to carry off a web cast in a timely  
 10 way. So I thought it was a bad idea and argued  
 11 against it. And I thought we should actually go,  
 12 you know, far more conservative to the other, on  
 13 the other extreme, which was what I in the end  
 14 advocated and what we agreed to, which was to set a  
 15 hard and fast time for lifting the embargo for all  
 16 the reasons I just said earlier.

17 Q. When you had this discussion with Mr.  
 18 Fisher, how did having a live web cast increase the  
 19 chances of something going wrong?

20 A. Well, I mean, most obviously, you know, we  
 21 have a history at Treasury of servers going down.  
 22 You know? I mean, it wasn't a particularly

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1 at 10:00 a.m.?

2 A. It was late the previous week.

3 Q. Did you discuss the issue of setting the  
 4 time with anybody?

5 A. Yes. I discussed it with -- discussed it  
 6 with Betsy. I discussed it with -- I certainly  
 7 discussed it with Peter Fisher. And there were  
 8 certainly others in the room when we had that  
 9 discussion, most likely Brian Roseborough and/or  
 10 Tim Bitsberger or Jeff Luther, maybe Paul Malvey.  
 11 I don't recall who else was in the room, but I know  
 12 there were others in the room and that's the likely  
 13 group that would have been there.

14 Q. Was there one discussion with the group?

15 A. There was at least one discussion. There  
 16 may have been more. I don't remember specifically.

17 Q. All right. And what was said in that  
 18 discussion?

19 A. Well, Peter -- Peter first had the idea that  
 20 he wanted to have the press conference be live web  
 21 cast. And I objected to that. I thought that, you  
 22 know, we already have a fairly sizeable piece of

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1 reliable Internet infrastructure at Treasury, and I  
 2 didn't have faith that we'd get to 10 minutes  
 3 before the press conference and someone from the IT  
 4 office would call up and say, you know, we can't  
 5 web cast it, or there's going to be a delay, or the  
 6 server went down. Something like that. And I  
 7 wanted us to be, you know, tried and true,  
 8 reliable, give the news to actual human beings who  
 9 will get the news out the normal, you know, the  
 10 normal way. The only change was to give them, you  
 11 know, more time in a hard set embargo.

12 Q. And your concern was that those who attended  
 13 the conference would have a leg up on others who  
 14 may be watching it in the general public if there  
 15 was something wrong with the web cast?

16 MS. WILLIAMS: Objection.

17 A. No.

18 BY MR. THEODOROU:

19 Q. What does the Internet have to do with it,  
 20 the Internet being down, if you are having a live  
 21 press conference on TV?

22 A. He was asking about web casting it, not

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| <p style="text-align: right;">Page 134</p> <p>1 doing a live --</p> <p>2 Q. Okay.</p> <p>3 A. And that would have been an additional</p> <p>4 problem. He said, well, why -- he said, well,</p> <p>5 can't we go, can't we just go live? And I said --</p> <p>6 and in that case it would be broadcast on TV. And</p> <p>7 I said, "Peter, I can't guarantee that --" you</p> <p>8 know, the only usual suspects on the TV side that</p> <p>9 would consider coming to cover a quarterly</p> <p>10 refunding announcement, you know, would have been</p> <p>11 Bloomberg, CNBC, you know, maybe Reuters. I would</p> <p>12 have to ask them, do you plan on going live? And</p> <p>13 they would say, is he going to make news? And I'd</p> <p>14 say, I can't tell you. And then you get into a</p> <p>15 very tricky discussion that I definitely don't want</p> <p>16 to have. I don't want to tip TV guys that we might</p> <p>17 be making special news at a quarterly refunding</p> <p>18 announcement, so I can't talk them into covering</p> <p>19 events. So I couldn't guarantee to Peter that it</p> <p>20 would be covered live. The only way you could</p> <p>21 guarantee that it would be broadcast live would be</p> <p>22 in the form of a web cast, but I didn't have good</p> | <p style="text-align: right;">Page 136</p> <p>1 you find much news there.</p> <p>2 Q. And why did Mr. Fisher want to go live?</p> <p>3 A. Peter had been looking at -- Peter comes</p> <p>4 from, had been up at the New York Fed and had a</p> <p>5 high degree of interest in trying to find ways to</p> <p>6 increase efficiency in markets, and one of the ways</p> <p>7 that you increase efficiency in markets is by</p> <p>8 reducing the time span in terms of information and</p> <p>9 transmission of information. So, for example, on</p> <p>10 the auction results, there was, there had been, you</p> <p>11 know, time lags. You have to think about the size</p> <p>12 of these markets and the margins that traders are</p> <p>13 dealing with. You know, you would get auction</p> <p>14 results, and sometimes it would take four or five</p> <p>15 minutes to get from the closing of an auction to</p> <p>16 get the results published. And Peter worked to</p> <p>17 find ways to squeeze that down to one to two</p> <p>18 minutes. He would like to make it instantaneous.</p> <p>19 So any way that you can find to get instantaneous</p> <p>20 news to the market in the most transparent way</p> <p>21 possible, that's something that Peter had a high</p> <p>22 degree of interest in and just felt it would</p> |
| <p style="text-align: right;">Page 135</p> <p>1 confidence in the reliability of web casting.</p> <p>2 Q. Because of the Treasury's Internet</p> <p>3 facilities?</p> <p>4 A. Yeah.</p> <p>5 THE VIDEOGRAPHER: This concludes tape two</p> <p>6 in the deposition of Tony Fratto. Off the record</p> <p>7 at 1:48:53.</p> <p>8 (Brief recess taken.)</p> <p>9 THE VIDEOGRAPHER: This begins tape three in</p> <p>10 the deposition of Tony Fratto. On the record at</p> <p>11 1:49:30.</p> <p>12 BY MR. THEODOROU:</p> <p>13 Q. Why was October 31st different than the May</p> <p>14 and August press conference, quarterly refunding</p> <p>15 press conferences where you had to set a time, as</p> <p>16 opposed to polling the reporters?</p> <p>17 A. The news, you know, that we were</p> <p>18 discontinuing the 30-year bond. That it was</p> <p>19 definitely -- you know, I knew that. I knew that</p> <p>20 it was going to be bigger news than, you know --</p> <p>21 you know, a quarterly refunding press conference is</p> <p>22 a relatively sleepy affair. It's not usual that</p>   | <p style="text-align: right;">Page 137</p> <p>1 improve market efficiency.</p> <p>2 Q. Did he have any concern that there would be</p> <p>3 a release, a premature release of the information</p> <p>4 discussed at the press conference before the</p> <p>5 embargo?</p> <p>6 MS. WILLIAMS: Objection.</p> <p>7 A. I don't recall him expressing that to me.</p> <p>8 BY MR. THEODOROU:</p> <p>9 Q. And what was his response to your proposal?</p> <p>10 A. In the end he agreed. I mean, he made this</p> <p>11 philosophy of his, you know -- I was well aware, I</p> <p>12 spent a lot of time with Peter and I knew that</p> <p>13 that's what his reasoning was. But I just told him</p> <p>14 that, in my judgment, it wasn't worth the risk. It</p> <p>15 just wasn't -- you know, we don't -- if we want to</p> <p>16 do that, let's do it, but let's do it over some</p> <p>17 period of time. Let's do it over the next three</p> <p>18 quarterly refundings, you know, where we -- you</p> <p>19 know, at one quarterly refunding we say we are</p> <p>20 considering doing a live web cast. You know? Four</p> <p>21 months later at the next quarterly refunding we</p> <p>22 say, at the next quarterly refunding we will web</p>   |

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1 cast. And then on the third quarterly refunding,  
2 we actually web cast. And then that way, number  
3 one, it gives us a lot of time to make sure that we  
4 have a rigorous infrastructure to be able to  
5 reliably web cast; and, number two, you tell the  
6 markets what to expect and they have a lot of time  
7 to know how, you know, how to expect news to come  
8 to them. And, you know, so I just wanted us to be  
9 cautious about doing big changes, and I just did  
10 not think that it was appropriate to try to do a  
11 major change when we were also making major news.  
12 It just wasn't worth the risk.

13 Q. Was your concern -- well, given your  
14 concerns about the Internet capability at Treasury,  
15 was your concern that something could have gone  
16 wrong with the web cast, and at the same time you  
17 were releasing information to reporters who would  
18 then have advanced information compared to the  
19 general public?

20 A. Reporters always have advanced information  
21 ahead of the general public. It's their job; we  
22 rely on them to disseminate news to the general

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1 public. So I didn't have a concern about that. In  
2 fact, I relied -- when I say, I really mean this.  
3 I rely on the Treasury press corps to disseminate  
4 news to the markets and the general public. I have  
5 much more confidence in that part of dissemination  
6 than I do on the web page dissemination. Everyone  
7 who has a Web site that they deal with knows that,  
8 you know, at the most unpredictable times you have  
9 problems with the web page. So I'm not ready and I  
10 certainly wasn't ready in the year 2001, I'm not  
11 even sure I'm ready in the year 2006 to say I can  
12 put full faith and confidence in Internet  
13 infrastructure to get that information out on a  
14 precise time. We're not there yet.

15 Q. Especially after what happened in October  
16 2001.

17 MS. WILLIAMS: Objection.

18 A. No. I mean, that had nothing to do with it.  
19 That was human error, that wasn't even  
20 infrastructure error. There is lots of  
21 infrastructure error. I have seen infrastructure  
22 error with our web platform. But that was human

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1 error. You know? And that human error is going to  
2 happen.

3 BY MR. THEODOROU:

4 Q. But I guess my question is, my question is,  
5 you had concerns about their ability that -- their  
6 Internet capability and, therefore, they might not  
7 be able to web cast at the same time. So he would  
8 be doing a live press conference to a group of  
9 reporters and people attending the conference. And  
10 if the web cast couldn't go out, so what? What  
11 difference would that make?

12 MS. WILLIAMS: Objection.

13 A. We would have raised expectations that you  
14 will find the news on the web cast, and then they  
15 wouldn't see it. That was the risk.

16 BY MS. THEODOROU:

17 Q. So it wasn't an issue of market sensitive  
18 information getting out ahead?

19 A. No.

20 Q. Okay.

21 A. No. Not at all.

22 Q. Did Mr. Fisher, was Mr. Fisher -- how many

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1 discussions did you have about this issue with Mr.  
2 Fisher?

3 A. Just, I mean, no more than two.

4 Q. Was Mr. Fisher concerned about the danger  
5 that that information might leak out before 10:00  
6 a.m.?

7 MS. WILLIAMS: Objection.

8 A. You would have to ask him. If he was, he  
9 didn't express it to me.

10 BY MR. THEODOROU:

11 Q. So Mr. Fisher did not express a concern  
12 about the leaking out of information?

13 A. Not that I recall.

14 Q. If you could go to Exhibit 1, Mr. Fratto.

15 A. Okay.

16 Q. Page 2, the second paragraph. Do you see  
17 that?

18 A. Yes.

19 Q. Now, when did you first learn about the  
20 decision to suspend the 30-year bond?

21 A. That sounds about right. I recall it being  
22 on Thursday, the 26th.

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| <p style="text-align: right;">Page 142</p> <p>1 Q. And it says: Fratto said he first heard the</p> <p>2 decision to suspend sales of the 30-year bond on</p> <p>3 Thursday, October 26, 2001.</p> <p>4 Do you see that?</p> <p>5 A. Yes, sir.</p> <p>6 Q. And you remember talking to OIG about that</p> <p>7 date?</p> <p>8 A. Vaguely. Yeah.</p> <p>9 Q. Why were you so accurate with the date that</p> <p>10 you learned about it on Thursday, October 26, 2001?</p> <p>11 MS. WILLIAMS: Objection.</p> <p>12 A. Probably just it was fresh in my mind at the</p> <p>13 time.</p> <p>14 BY MR. THEODOROU:</p> <p>15 Q. Okay. When did you first learn that Under</p> <p>16 Secretary Fisher was going to deliver his remarks</p> <p>17 at the refunding conference?</p> <p>18 A. It was around that time. It was probably</p> <p>19 the same day.</p> <p>20 Q. How did you learn about the decision to</p> <p>21 suspend the 30-year bond?</p> <p>22 A. Peter invited me into his office and told</p>   | <p style="text-align: right;">Page 144</p> <p>1 Q. Was it the same meeting at which the embargo</p> <p>2 time was discussed or decided upon?</p> <p>3 A. No. It was a subsequent meeting.</p> <p>4 Q. Other than your knowledge -- strike that.</p> <p>5 Did Mr. Fisher say anything about whether</p> <p>6 this is market sensitive information?</p> <p>7 A. I don't know whether he did or didn't. But</p> <p>8 he certainly didn't have to. I knew that it was.</p> <p>9 Q. Given that you knew that it was, did you</p> <p>10 discuss with Mr. Fisher about taking special</p> <p>11 precautions so that this information would not be</p> <p>12 disclosed ahead of the embargo time?</p> <p>13 MS. WILLIAMS: Objection.</p> <p>14 MR. THEODOROU: What's the objection?</p> <p>15 MS. WILLIAMS: Form as to what he said.</p> <p>16 MR. THEODOROU: What form? It's a</p> <p>17 foundation question.</p> <p>18 A. I'm sorry. The question was whether I</p> <p>19 discussed with him?</p> <p>20 BY MR. THEODOROU:</p> <p>21 Q. Did you at this meeting, did you discuss</p> <p>22 with Mr. Fisher the issue of taking special</p>                      |
| <p style="text-align: right;">Page 143</p> <p>1 me.</p> <p>2 Q. Was anybody else there?</p> <p>3 A. There might have been. I don't remember.</p> <p>4 Q. What did he say?</p> <p>5 A. He said, we're going to have an important</p> <p>6 announcement at this next quarterly refunding.</p> <p>7 That we will, you know, we'll be discontinuing the</p> <p>8 issuance of the long bond. And I, you know,</p> <p>9 immediately knew that that was a big deal.</p> <p>10 Q. Why was that?</p> <p>11 A. The market loves the long bond. I mean,</p> <p>12 it's a big deal. It's a big deal.</p> <p>13 Q. And why does the market love the long bond?</p> <p>14 MS. WILLIAMS: Objection.</p> <p>15 A. You could talk to market participants. But</p> <p>16 they base a lot of things on the interest rate. A</p> <p>17 lot of things are based on the interest rate</p> <p>18 associated with the 30-year bond.</p> <p>19 BY MR. THEODOROU:</p> <p>20 Q. Was anybody else present at that meeting?</p> <p>21 A. There might have been. I'm sure there were,</p> <p>22 I just don't remember who specifically was there.</p> | <p style="text-align: right;">Page 145</p> <p>1 precautions at the quarterly refunding press</p> <p>2 conference so that the information would not be</p> <p>3 disclosed ahead of any embargo time?</p> <p>4 MS. WILLIAMS: Objection.</p> <p>5 A. I dealt with market sensitive information</p> <p>6 with Peter Fisher and others at Treasury on a daily</p> <p>7 basis. No one would have had to have had that</p> <p>8 conversation with me.</p> <p>9 BY MR. THEODOROU:</p> <p>10 Q. After you learned that the suspension of the</p> <p>11 long bond would be discussed at this quarterly</p> <p>12 refunding press conference, did you ever warn any</p> <p>13 employees at Treasury to be particularly careful on</p> <p>14 how they handled that information?</p> <p>15 MS. WILLIAMS: Objection.</p> <p>16 A. I had the conversation with Betsy Holahan.</p> <p>17 And I do remember specifically saying that this is</p> <p>18 big news and, you know, we just need to be careful</p> <p>19 with it.</p> <p>20 BY MR. THEODOROU:</p> <p>21 Q. So you do recall discussing it with</p> <p>22 Ms. Holahan what was going to be discussed at the</p> |

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|   |  |
|---|--|
| <p style="text-align: right;">Page 146</p> <p>1 quarterly refunding press conference?</p> <p>2 A. Yes. And Betsy was -- I don't know when</p> <p>3 exactly Betsy learned of this, whether -- I can't</p> <p>4 recall whether she learned it first from me or if</p> <p>5 she'd learned it separately from Peter or someone</p> <p>6 else in domestic finance. But we did have a</p> <p>7 conversation about it.</p> <p>8 Q. And would you please describe the substance</p> <p>9 of the conversation.</p> <p>10 A. I'm pulling on a thin thread of memory on</p> <p>11 that conversation. I remember talking about the</p> <p>12 fact that we were going to have to, you know, just</p> <p>13 make sure that we are -- you know, that things go</p> <p>14 right at the press conference, things go right with</p> <p>15 the announcement. That we should try to be clear</p> <p>16 on things. I think that may have been actually</p> <p>17 when I first raised the idea of setting a specific</p> <p>18 time. I don't know whether I had thought about</p> <p>19 10:00 or not, setting a specific time to lift the</p> <p>20 embargo.</p> <p>21 Q. Did you discuss -- outside of Ms. Holahan,</p> <p>22 did you discuss the issue of -- strike that.</p> | <p style="text-align: right;">Page 148</p> <p>1 doing this press conference without having a</p> <p>2 conversation with Michele.</p> <p>3 Q. But you don't recall?</p> <p>4 A. I don't believe a specific conversation. I</p> <p>5 just don't.</p> <p>6 Q. Do you recall whether you had such a</p> <p>7 conversation with any other employees besides</p> <p>8 Betsy?</p> <p>9 A. Yeah. I mean, yes. Those policy staffers</p> <p>10 in the office of market finance. People like Paul</p> <p>11 Malvey, Jeff Hoothor, Brian Roseborough and Tim</p> <p>12 Bitsberger. Yeah, I definitely discussed it with</p> <p>13 those guys.</p> <p>14 Q. Did you have such a conversation with</p> <p>15 Frances Anderson?</p> <p>16 A. No.</p> <p>17 Q. Do you know if Ms. Holahan had a discussion</p> <p>18 with Frances Anderson?</p> <p>19 A. I don't know.</p> <p>20 Q. Do you know if Ms. Holahan had any</p> <p>21 discussion with any other employees about the</p> <p>22 sensitivity of this information?</p> |
| <p style="text-align: right;">Page 147</p> <p>1 You remember talking to Ms. Holahan about</p> <p>2 setting a particular time?</p> <p>3 A. I definitely did. Yeah. And I'm sure we</p> <p>4 talked about it numerous times.</p> <p>5 Q. Did you talk to her about the sensitivity of</p> <p>6 the information?</p> <p>7 A. Yes. But like me, she was aware of the</p> <p>8 sensitivity of the information.</p> <p>9 Q. What did you say?</p> <p>10 A. I think what I just said. I, said this is</p> <p>11 pretty big news, and so, you know, be careful and</p> <p>12 we can't let this out. You know, no one can know</p> <p>13 about this.</p> <p>14 Q. Did you have such a conversation with any</p> <p>15 other Treasury employees?</p> <p>16 A. You know, I was asked about that previously,</p> <p>17 and I would be very, very surprised. I mean, I</p> <p>18 don't have specific recollection of it but I would</p> <p>19 be surprised if I didn't have this conversation</p> <p>20 with Michele Davis. But I don't remember actually</p> <p>21 doing it. But it would be hard to going back to</p> <p>22 that time. I don't believe I would, you know, be</p>   | <p style="text-align: right;">Page 149</p> <p>1 A. I don't know.</p> <p>2 Q. And why were you discussing it with her?</p> <p>3 A. With Betsy?</p> <p>4 Q. Yes.</p> <p>5 A. This was her portfolio.</p> <p>6 Q. I know you're assuming that I know.</p> <p>7 A. I understand.</p> <p>8 Q. But it's sort of like, unlike the press</p> <p>9 conferences, I can ask.</p> <p>10 A. I understand.</p> <p>11 Q. So I know you're assuming that I know, but</p> <p>12 why did you discuss it with Betsy?</p> <p>13 A. This was going to be the first refunding</p> <p>14 announcement that she was going to handle the press</p> <p>15 conference. This was her portfolio, domestic</p> <p>16 finance.</p> <p>17 Q. Do you have any notes of your meeting with</p> <p>18 Mr. Fisher discussing the embargo time?</p> <p>19 A. No.</p> <p>20 Q. Do you have any notes of your meetings with</p> <p>21 Mr. Fisher talking about the quarterly refunding</p> <p>22 conference of October 31?</p>                         |

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| <p style="text-align: right;">Page 150</p> <p>1 A. No.</p> <p>2 Q. Do you have any notes?</p> <p>3 A. <b>I don't keep notes. I don't have any notes.</b></p> <p>4 Q. So you don't have any notes about your</p> <p>5 discussion with Ms. Holahan?</p> <p>6 A. No.</p> <p>7 THE VIDEOGRAPHER: Off the record at</p> <p>8 20:04:29.</p> <p>9 (Brief recess taken.)</p> <p>10 THE VIDEOGRAPHER: On the record at 2:07:35.</p> <p>11 (FRATTO Exhibit Number 7 was marked for</p> <p>12 identification.)</p> <p>13 BY MR. THEODOROU:</p> <p>14 Q. Mr. Fratto, directing your attention to</p> <p>15 what's been marked as Exhibit 7. Have you seen</p> <p>16 that document before?</p> <p>17 A. Yes.</p> <p>18 Q. And what is it?</p> <p>19 A. <b>This is the media advisory announcing the</b></p> <p>20 <b>quarterly refunding news conference. It gives</b></p> <p>21 <b>direction to reporters on who, what, when, where,</b></p> <p>22 <b>and how the media event.</b></p>   | <p style="text-align: right;">Page 152</p> <p>1 exactly proof, but it's got the PO. This is a</p> <p>2 tracking number. This is the Paul O' Neal 746.</p> <p>3 Q. The left-hand corner of the document is</p> <p>4 PO-746. What does that mean?</p> <p>5 A. <b>That means that Frances Anderson took a</b></p> <p>6 <b>draft and added what we call -- we called back then</b></p> <p>7 <b>the PO number, and which means that she would have</b></p> <p>8 <b>done the rest of the activity with it which to post</b></p> <p>9 <b>it and disseminate it.</b></p> <p>10 Q. What does PO stand for?</p> <p>11 A. Paul O' Neal.</p> <p>12 Q. Who is the Treasury Secretary?</p> <p>13 A. <b>Was the Treasury Secretary at the time. So</b></p> <p>14 <b>we had a JWS number and now we have an HNP number</b></p> <p>15 Q. So --</p> <p>16 A. <b>It's just a tracking number.</b></p> <p>17 Q. So this was the 746th --</p> <p>18 A. <b>That's --</b></p> <p>19 Q. -- document?</p> <p>20 A. <b>I can only attest to what the first, the</b></p> <p>21 <b>initials mean. I don't know, that seems like a</b></p> <p>22 <b>high number of documents.</b></p> |
| <p style="text-align: right;">Page 151</p> <p>1 Q. Were you involved in drafting this document?</p> <p>2 A. <b>I reviewed it.</b></p> <p>3 Q. Do you know who drafted it?</p> <p>4 A. <b>Betsy Holahan did.</b></p> <p>5 Q. Did the Office of Public Affairs always</p> <p>6 distribute media advisories about upcoming</p> <p>7 quarterly refunding conferences?</p> <p>8 A. <b>I'm not sure.</b></p> <p>9 Q. Do you know if you had distributed such an</p> <p>10 advisory before the May conference?</p> <p>11 A. <b>Before the May conference? I'm not sure. I</b></p> <p>12 <b>don't know.</b></p> <p>13 Q. Was this advisory also posted on the Web</p> <p>14 site?</p> <p>15 A. <b>I think so. Yeah. You mean would it be or</b></p> <p>16 <b>is it? You're asking me is it? Has it been?</b></p> <p>17 Q. Well, let me go back to this one. Was this</p> <p>18 posted on the Web site?</p> <p>19 A. <b>It would have been, yes, I presume. Yeah.</b></p> <p>20 <b>Definitely.</b></p> <p>21 Q. And how do you know that?</p> <p>22 A. <b>Because it's got the PO. Well, this isn't</b></p> | <p style="text-align: right;">Page 153</p> <p>1 Q. You don't know what 746 was?</p> <p>2 A. <b>It just seems like a high number for even</b></p> <p>3 <b>October of 2001. I don't know how they get the</b></p> <p>4 <b>numbers. But it's possible that it's the 746th</b></p> <p>5 <b>document to come through public affairs during the</b></p> <p>6 <b>term of Paul O' Neal, but I don't know that for</b></p> <p>7 <b>certain.</b></p> <p>8 Q. So this is announcing that the quarterly</p> <p>9 refunding news conference will take place at 9:00</p> <p>10 a.m. on Wednesday October 31st, 2001. Correct?</p> <p>11 A. <b>Correct.</b></p> <p>12 Q. All right. Now, the document states that</p> <p>13 the event will have a 10:00 a.m. news embargo.</p> <p>14 Do you see where that's stated in the --</p> <p>15 A. <b>Yes.</b></p> <p>16 Q. -- in the document? You've seen that.</p> <p>17 Right?</p> <p>18 A. <b>Yes.</b></p> <p>19 Q. All right. Now, what does the term news</p> <p>20 embargo mean?</p> <p>21 A. <b>It means that members of the media cannot</b></p> <p>22 <b>disseminate the news that they gain from this event</b></p> |

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| <p style="text-align: right;">Page 154</p> <p>1 until 10:00 a.m. on that date.</p> <p>2 Q. Were any steps taken to advise attendees who</p> <p>3 were not members of the press that the news embargo</p> <p>4 also applied to them when they attended these</p> <p>5 conferences?</p> <p>6 A. I wasn't aware --</p> <p>7 MS. WILLIAMS: Objection.</p> <p>8 A. I wasn't aware of anyone in attendance --</p> <p>9 other than some Treasury policy staff, I wasn't</p> <p>10 aware of others who were not members of the media</p> <p>11 who were in attendance.</p> <p>12 BY MR. THEODOROU:</p> <p>13 Q. So before the October 31st, 2001 conference,</p> <p>14 you were not aware of anyone other than media</p> <p>15 attending the quarterly refunding conferences?</p> <p>16 A. That's right.</p> <p>17 MS. WILLIAMS: Objection.</p> <p>18 BY MR. THEODOROU:</p> <p>19 Q. Did you take any steps before October 31 to</p> <p>20 determine whether anyone outside of the media</p> <p>21 attended quarterly refunding press conferences?</p> <p>22 A. No.</p>                  | <p style="text-align: right;">Page 156</p> <p>1 Q. -- before October 31st, 2001?</p> <p>2 A. No.</p> <p>3 Q. As of October 31st, 2001, do you know who at</p> <p>4 Treasury was responsible for deciding who could</p> <p>5 attend the quarterly refunding press conferences?</p> <p>6 A. I'm sorry, could you say that again?</p> <p>7 Q. As of October 31st, 2001, do you know who at</p> <p>8 Treasury was responsible for deciding who could</p> <p>9 attend press conferences, refunding press</p> <p>10 conferences?</p> <p>11 A. No. All I can say is the Office of Public</p> <p>12 Affairs was responsible for inviting members of the</p> <p>13 media and clearing them in for press conferences,</p> <p>14 including quarterly refunding announcements.</p> <p>15 Q. Do you know if there was a comprehensive</p> <p>16 list of everyone who attended the October 31st,</p> <p>17 2001 press conference?</p> <p>18 A. No.</p> <p>19 Q. Now, how did those individuals who were</p> <p>20 attending the quarterly refunding press conferences</p> <p>21 as of October 31st, 2001 get into the Treasury</p> <p>22 Building on the morning of the press conference?</p>                    |
| <p style="text-align: right;">Page 155</p> <p>1 Q. Do you know if anybody at Treasury ever took</p> <p>2 any steps before October 31st, 2001 to determine</p> <p>3 whether nonmedia persons attended the quarterly</p> <p>4 refunding press conferences?</p> <p>5 A. I don't know if they did.</p> <p>6 Q. Now, directing your attention again to</p> <p>7 Exhibit 1.</p> <p>8 Before we get there, who was allowed to</p> <p>9 attend quarterly refunding press conferences before</p> <p>10 October 31st, 2001?</p> <p>11 A. There wasn't a policy on who was allowed to</p> <p>12 attend. But I never had any expectations that</p> <p>13 anybody -- that anyone except excepting members of</p> <p>14 the news media and Treasury staff would attend.</p> <p>15 Q. But there was no policy as to who could</p> <p>16 attend?</p> <p>17 A. Not that I'm aware of. I didn't have a</p> <p>18 policy.</p> <p>19 Q. Have you ever heard anybody talk about a</p> <p>20 policy as to who could attend the quarterly</p> <p>21 refunding press conferences --</p> <p>22 A. No.</p> | <p style="text-align: right;">Page 157</p> <p>1 A. Those individuals, meaning members of the --</p> <p>2 are you make a distinction between members of the</p> <p>3 media or nonmembers of the media?</p> <p>4 Q. Anybody who was attending.</p> <p>5 A. Well, for anyone to enter the Treasury</p> <p>6 Building, they need to be cleared by Secret</p> <p>7 Service. And unless they have a permanent badge,</p> <p>8 they need to be -- a permanent Treasury badge, in</p> <p>9 which they can't wouldn't have to be cleared in.</p> <p>10 So if they were cleared in, they had to be escorted</p> <p>11 to wherever they need to be in the building by a</p> <p>12 Treasury official.</p> <p>13 Q. And what room in the Treasury Building was</p> <p>14 normally used for the quarterly refunding press</p> <p>15 conferences?</p> <p>16 A. The diplomatic reception room.</p> <p>17 Q. And is there a reason why the diplomatic</p> <p>18 reception room as opposed to another conference</p> <p>19 room was used for that particular kind of</p> <p>20 conference?</p> <p>21 A. There is no other conference -- there was no</p> <p>22 other conference room at the time. The cash room.</p> |

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|---|--|
| <p style="text-align: right;">Page 158</p> <p>1 The catch room at the time, which is a horrible</p> <p>2 place to try to do a press event, was -- still</p> <p>3 wasn't opened yet, it was still under</p> <p>4 reconstruction. So it was the only room available</p> <p>5 for a press conference of any size.</p> <p>6 Q. Was the May quarterly refunding conference</p> <p>7 held in the diplomatic reception room?</p> <p>8 A. Yeah. I'm pretty sure it was.</p> <p>9 Q. Was the August 2001 conference held in that</p> <p>10 room?</p> <p>11 A. I can't recall that one.</p> <p>12 Q. Was the secretary's conference room ever</p> <p>13 used?</p> <p>14 A. The secretary's conference room? From time</p> <p>15 to time for different press conferences, it was.</p> <p>16 And there were -- you know, there were different,</p> <p>17 it was used for different events. Was it used for</p> <p>18 a quarterly refunding press announcement? I'm just</p> <p>19 not sure.</p> <p>20 Q. You're not sure if the secretary's room was</p> <p>21 used?</p> <p>22 A. No, it was. Actually, the May 2nd event was</p>   | <p style="text-align: right;">Page 160</p> <p>1 31st, 2001.</p> <p>2 A. Um-hmm.</p> <p>3 Q. The conference that day started at 9:00?</p> <p>4 A. It started at 9:00 or shortly after 9:00,</p> <p>5 yeah.</p> <p>6 Q. Was there anyone there from Treasury who had</p> <p>7 the job of keeping people out of the conference</p> <p>8 room?</p> <p>9 MS. WILLIAMS: Objection.</p> <p>10 A. I don't know if that job had been assigned</p> <p>11 to anyone. I have no knowledge if it was. I don't</p> <p>12 know if Betsy gave direction on that or not, but I</p> <p>13 didn't give anyone direction on that.</p> <p>14 BY MR. THEODOROU:</p> <p>15 Q. So, there was nobody -- you did not give</p> <p>16 anybody any direction to prevent people from coming</p> <p>17 in and out of the conference room?</p> <p>18 A. No. Again, Treasury -- it's a different</p> <p>19 building. You know, if you follow the rules of the</p> <p>20 building and you are a visitor to the Treasury</p> <p>21 Building, you should be escorted by a Treasury</p> <p>22 staffer, who would meet you at the entrance, take</p>           |
| <p style="text-align: right;">Page 159</p> <p>1 in the -- actually, the May 2nd event was in the</p> <p>2 large conference room.</p> <p>3 Q. The secretary's room is larger than the</p> <p>4 diplomatic room?</p> <p>5 A. No. They are fairly identical in size.</p> <p>6 Maybe it's a little bit larger. But the large</p> <p>7 conference room is dominated by a massive</p> <p>8 conference table.</p> <p>9 Q. So why was the diplomatic reception room,</p> <p>10 Room 3311, used on October 31?</p> <p>11 A. It was just more -- it was available, and it</p> <p>12 was -- it's easier to set it up as a press</p> <p>13 conference. If you ever want to hold a press</p> <p>14 conference, a large conference room isn't a useful</p> <p>15 room for a press conference. It's got a large --</p> <p>16 imagine this room three times as big, you know,</p> <p>17 with a table in the middle. It doesn't look like a</p> <p>18 press conference. You want the podium and</p> <p>19 classroom seating. And say you don't get that in a</p> <p>20 large conference room, but you can set up the</p> <p>21 diplomatic reception room for that kind of event.</p> <p>22 Q. Now, directing your attention to October</p> | <p style="text-align: right;">Page 161</p> <p>1 you where you need to be. It's not -- and I'll</p> <p>2 say, it's not that -- I'm sure there have been</p> <p>3 cases where people conclude a meeting and file out</p> <p>4 of the Treasury Building, you know, unescorted.</p> <p>5 But, that's not -- but anyone who's walking through</p> <p>6 the halls of the Treasury Building should have a</p> <p>7 specific reason to be there.</p> <p>8 Q. Did you take any steps to keep people from</p> <p>9 leaving the room once the conference started?</p> <p>10 A. No.</p> <p>11 Q. Were there any Treasury employees assigned</p> <p>12 to keep people from leaving the room once the</p> <p>13 conference started?</p> <p>14 A. No.</p> <p>15 Q. Did you take any steps from allowing -- did</p> <p>16 you take any steps to prevent people from entering</p> <p>17 the room once the conference started?</p> <p>18 A. No.</p> <p>19 Q. Do you know if any Treasury employees were</p> <p>20 assigned the task of preventing people from</p> <p>21 entering the room once the press conference</p> <p>22 started?</p> |

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1 **A. No. I can't think of a reason why we would**  
 2 **prevent people from entering the room.**  
 3 Q. Did you take any steps to check the identity  
 4 of people who were in the room at the time of the  
 5 press conference?  
 6 **A. No.**  
 7 Q. Did you take any steps to check the press  
 8 credentials of people in the room at the time of  
 9 the press conference?  
 10 **A. Well, if they have press -- they couldn't**  
 11 **get into the Treasury Building without press**  
 12 **credentials. I mean, if they have a press**  
 13 **credential, check the press credential? No.**  
 14 Q. Did you take any steps that day to determine  
 15 that only the press was attending the conference?  
 16 **A. No.**  
 17 Q. So what happened at the conference? What  
 18 time did it start?  
 19 **A. It started at 9:00 or shortly after 9:00. I**  
 20 **walked into the press conference, into the**  
 21 **diplomatic reception room with Peter. I remember**  
 22 **Betsy was already in the room. We were about to --**

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1 so Peter walked up to the podium. Betsy was about  
 2 to announce and then did announce that -- she  
 3 introduced Peter, and then announced that there  
 4 would be a 10:00 embargo on the press conference.  
 5 I stood up off to the side. If you want to imagine  
 6 it, think of it very much like this room with two  
 7 doors.  
 8 Q. I'm going to have you draw it out.  
 9 **A. Sure.**  
 10 **(Witness complying.)**  
 11 **BY MR. THEODOROU:**  
 12 Q. So now let's mark that. That's going to be  
 13 marked as Exhibit 8. You are going to draw out as  
 14 best you can --  
 15 **A. As best I can.**  
 16 Q. I don't have a ruler -- entitled The  
 17 Diplomatic Reception Room. Right?  
 18 **A. Yep.**  
 19 **(FRATTO Exhibit Number 8 was marked for**  
 20 **identification.)**  
 21 **BY MR. THEODOROU:**  
 22 Q. So if you could please mark the doors, the

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1 podium, and relevant hallways on that document.  
 2 **A. Um-hmm. So here's the hallway. I will**  
 3 **just -- this may be helpful also. Peter Fisher's**  
 4 **office was right across the hall.**  
 5 Q. Could you please mark --  
 6 **A. Sure.**  
 7 Q. -- Mr. Fisher's office.  
 8 So when you say you came into the conference  
 9 room with Mr. Fisher, you entered into that door?  
 10 Could you mark that door as door A. And then mark  
 11 the other doors as B, C, and D.  
 12 All right. What else was in that room that  
 13 day?  
 14 **A. So I've got a podium here.**  
 15 Q. Could you mark that as podium.  
 16 **A. And then I'm not going to get the number**  
 17 **right, but --**  
 18 Q. And the Xs indicate chairs?  
 19 **A. Chairs. This is -- I couldn't tell you how**  
 20 **many, I'm not good at this kind of estimating, but**  
 21 **how many chairs are in the room. But I think this**  
 22 **is probably fairly representative. So what we**

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1 would call, yeah, classroom style seating.  
 2 Q. Now, you entered with Mr. Fisher. And  
 3 approximately where were you during the press  
 4 conference?  
 5 **A. Standing right here.**  
 6 Q. By the door which is -- if you'd indicate  
 7 with your last name where you were.  
 8 **A. Sure.**  
 9 Q. So your back was to door B?  
 10 **A. Near door A. My back was to -- well.**  
 11 Q. You would have been facing the podium?  
 12 **A. I would have been facing the podium, and**  
 13 **then the reporters here.**  
 14 Q. And where was Ms. Holahan?  
 15 **A. I think Betsy was right next to me, but I**  
 16 **don't remember specifically.**  
 17 **MS. WILLIAMS: At what point?**  
 18 **BY MR. THEODOROU:**  
 19 Q. To the best of your knowledge.  
 20 **MS. WILLIAMS: At what point?**  
 21 **A. When we walked in, Betsy was here. And this**  
 22 **is --**

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1 **BY MR. THEODOROU:**  
 2 Q. Why don't you mark that with H-1 as to where  
 3 she was when you first walked in.  
 4 A. Okay. You know, in terms of --  
 5 Q. And where were you and Mr. Fisher when you  
 6 first walked in?  
 7 A. In his office.  
 8 Q. And then you walked in, and then you went to  
 9 the right of -- to the right of door A?  
 10 A. I always stand in the same spot.  
 11 Q. And Mr. Fisher went to the podium?  
 12 A. And he went to the podium. Yeah.  
 13 Q. Now, did Ms. Holahan address the room while  
 14 Mr. Fisher was at the podium?  
 15 A. Yeah. As he approached the podium and while  
 16 he was standing there.  
 17 Q. And what did she say?  
 18 A. Just said, I want to introduce Under  
 19 Secretary Peter Fisher. He will lead this news  
 20 conference. And I just want to remind you that  
 21 this event has a 10:00 embargo.  
 22 Q. Did she tell those who were attending what

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1 embargo meant?  
 2 A. No.  
 3 Q. Do you remember any other Treasury employees  
 4 being in that room?  
 5 A. I know that there were. I just -- I don't  
 6 specifically remember seeing them in the room, but  
 7 I know that they were in there.  
 8 Q. You just don't know who they were?  
 9 A. No. I mean, I know that Peter Fisher and  
 10 Jeff Hooter for sure were in the room during the  
 11 press conference. I remember seeing them outside  
 12 just before the press conference, and I think I saw  
 13 them go in that door.  
 14 Q. Do you recall any other employees there?  
 15 A. Not specifically. I just remember those two  
 16 for sure.  
 17 Q. All right. So she announces this at the  
 18 beginning. Do you recall anything else she said  
 19 with her initial remarks?  
 20 A. No.  
 21 Q. Then what happened?  
 22 A. Then Peter began the press conference by

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1 reading his statement, his prepared remarks. And  
 2 at the conclusion of reading his remarks, he said  
 3 he would take some questions. And rather than  
 4 selecting for reporters for him, which I might do  
 5 on some occasions for some people, I let Peter call  
 6 on reporters on his own. So he called on I think a  
 7 total of three, maybe four reporters that had  
 8 questions. And I was surprised by the lack of  
 9 questions. I just remember thinking, I can't  
 10 believe there aren't more questions.  
 11 Q. And how long did it take him to read his  
 12 statement?  
 13 A. I would guess 15 minutes or so. Maybe a  
 14 little more.  
 15 Q. And did you and Mr. Fisher arrive there  
 16 promptly at 9:00?  
 17 A. You know, I don't know for certain exactly  
 18 what time we started. It wasn't -- we definitely  
 19 didn't start before 9:00. I don't have a -- you  
 20 know, I knew that we were relatively close to on  
 21 time, but so it had to be somewhat short --  
 22 sometime shortly after 9:00.

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1 Q. And how long did the give-and-take with the  
 2 reporters, the question-and-answer period take?  
 3 A. I mean, you know, it could be, what, eight  
 4 minutes, you know, ten minutes. I'm guessing. It  
 5 wasn't 20 minutes and it wasn't five minutes. It  
 6 was -- you know, I would say in the eight to ten  
 7 minute range.  
 8 Q. Then what happened after that?  
 9 A. Then so, you know, there was a lot of time  
 10 between like whether it was the second and third  
 11 question or the third and fourth question, I can't  
 12 remember exactly how many questions were asked.  
 13 But usually, you know, it's like making popcorn in  
 14 a microwave, you know, you wait until the pops slow  
 15 down and then try to end the press conference  
 16 before the kernels burn. Right? So it was sort of  
 17 the same thing. You know, you don't -- as soon as  
 18 there's a lot of space in between the questions,  
 19 you know, I'll get a sense that questions are  
 20 slowing down and I'll announce last question. In  
 21 this case, Betsy did it. So Betsy announced last  
 22 question. And then you end the conference by

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| <p style="text-align: right;">Page 170</p> <p>1 simply saying, thank you. You know? So the press</p> <p>2 are there, which would say thank you. And Betsy</p> <p>3 did. You know, after she announced last question</p> <p>4 there was a last question, Peter gave the answer.</p> <p>5 Betsy said thank you, and then said, and just as a</p> <p>6 another reminder, the embargo is for 10:00.</p> <p>7 Q. And, again, did she state what the embargo</p> <p>8 meant?</p> <p>9 A. No.</p> <p>10 Q. Then what happened? Where did you go?</p> <p>11 A. I crossed the hall with Peter Fisher into</p> <p>12 his office. And I remember just remarking, wow,</p> <p>13 you know, I can't believe there weren't more</p> <p>14 questions. You know. And then it was sort of at</p> <p>15 that moment that it occurred to me that, you know,</p> <p>16 the reason there weren't more questions is because</p> <p>17 they realized that it was big news, and there would</p> <p>18 be lots of times for questions later, they just</p> <p>19 wanted to report the news.</p> <p>20 Q. To your knowledge, has the Treasury</p> <p>21 Department ever used confidentiality agreements?</p> <p>22 A. Not --</p> | <p style="text-align: right;">Page 172</p> <p>1 A. Someone on that day, on October 31st,</p> <p>2 mentioned his name to me, and said that when there</p> <p>3 was a -- there was a suspicion raised that the news</p> <p>4 was -- that the news of the 30-year bond being</p> <p>5 discontinued was in the markets even before</p> <p>6 Treasury had inadvertently posted the statement.</p> <p>7 Someone remarked that they thought that Peter Davis</p> <p>8 was in the press conference.</p> <p>9 Q. Who told you that?</p> <p>10 A. It was someone from the Office of Domestic</p> <p>11 Finance. I can't recall who used his name.</p> <p>12 Q. And do you know how Mr. Davis was able to</p> <p>13 attend the refunding press conference?</p> <p>14 A. Paul Malvey, who told me that his office had</p> <p>15 cleared in Peter Davis.</p> <p>16 Q. Who is Mr. Malvey?</p> <p>17 A. Paul Malvey at the time was the director of</p> <p>18 market finance in the Office of Domestic Finance.</p> <p>19 Q. And when did he tell you that his office had</p> <p>20 cleared Mr. Davis to attend the conference?</p> <p>21 A. That afternoon.</p> <p>22 Q. The afternoon of October 31st?</p> |
| <p style="text-align: right;">Page 171</p> <p>1 MS. WILLIAMS: Objection.</p> <p>2 A. Not to my knowledge. I consider us all</p> <p>3 under -- you mean with -- I only know what they do</p> <p>4 with us as employees.</p> <p>5 BY MR. THEODOROU:</p> <p>6 Q. To your knowledge, has the Treasury</p> <p>7 Department ever asked a non-Treasury Department</p> <p>8 employee to sign a confidentiality agreement with</p> <p>9 Treasury?</p> <p>10 MS. WILLIAMS: Objection.</p> <p>11 A. Not to my knowledge.</p> <p>12 BY MR. THEODOROU:</p> <p>13 Q. Do you know whether Treasury has ever used</p> <p>14 confidentiality agreements?</p> <p>15 MS. WILLIAMS: Objection.</p> <p>16 A. I don't know.</p> <p>17 BY MR. THEODOROU:</p> <p>18 Q. Do you know who Peter Davis is?</p> <p>19 A. I have learned a few things about him, but I</p> <p>20 couldn't pick him out of a line-up.</p> <p>21 Q. And when did you first learn about Peter</p> <p>22 Davis?</p>  | <p style="text-align: right;">Page 173</p> <p>1 A. Yes.</p> <p>2 Q. Now, was his attendance at the quarterly</p> <p>3 refunding press conference consistent with your</p> <p>4 understanding of Treasury Department policy?</p> <p>5 MS. WILLIAMS: Objection.</p> <p>6 A. I have no -- I know of no Treasury</p> <p>7 Department policy having to do with either</p> <p>8 specifically Peter Davis or any other individual in</p> <p>9 terms of attending a quarterly refunding press</p> <p>10 conference.</p> <p>11 BY MR. THEODOROU:</p> <p>12 Q. Are you familiar with any Treasury</p> <p>13 Department policy that prohibited nonpress from</p> <p>14 attending the quarterly refunding press conference?</p> <p>15 A. Not specifically. No.</p> <p>16 Q. Did you ever hear, have you ever heard about</p> <p>17 Mr. Davis getting kicked out of prior Treasury</p> <p>18 press conferences?</p> <p>19 A. No. I heard the opposite; that he had</p> <p>20 previous -- Paul Malvey told me that he had</p> <p>21 previously been in previous quarterly refunding</p> <p>22 press conferences.</p>  |

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| <p>1 Q. Did Mr. Malvey tell you why he allowed Mr.<br/>2 Davis to attend?<br/>3 A. No.<br/>4 Q. Did you ask him?<br/>5 A. No.<br/>6 Q. Were you concerned?<br/>7 A. Yes.<br/>8 Q. So why didn't you ask him?<br/>9 A. Because I figured investigators could ask<br/>10 him and ask other questions.<br/>11 Q. Did you ever hear of Mr. Davis being barred<br/>12 from prior press conferences by someone named John<br/>13 Murchison?<br/>14 A. No. But I wish I'd known that.<br/>15 Q. Do you know who John Murchison is?<br/>16 A. No. The name is really familiar to me, but<br/>17 I don't know. I don't know why I'd know it.<br/>18 Q. He'll fill you in.<br/>19 A. Okay.<br/>20 Q. Do you know a woman by the name of Lula<br/>21 Tyler?<br/>22 A. No.</p>   | <p>1 A. No.<br/>2 Q. Do you know Roger Anderson?<br/>3 A. No.<br/>4 Q. Have you ever become aware of a<br/>5 confidentiality agreement reached between Peter<br/>6 Davis and any employee or representative of the<br/>7 Treasury Department as to whether he could disclose<br/>8 information?<br/>9 A. No.<br/>10 Q. Did you ever become of a confidentiality<br/>11 agreement between the Treasury Department and Mr.<br/>12 Davis?<br/>13 A. No.<br/>14 Q. Have you ever been told of such an<br/>15 agreement?<br/>16 A. I have been asked questions similar of the<br/>17 way that you are asking them now.<br/>18 Q. By?<br/>19 A. But I've never -- by them. But I've never<br/>20 been told by anyone.<br/>21 Q. If such an agreement had existed, should the<br/>22 Office of Public Affairs have been informed of</p>   |
| Page 175   | Page 177   |
| <p>1 Q. Do you know Elenora Bowser?<br/>2 A. No.<br/>3 Q. Did Mr. Malvey have the authority to clear<br/>4 persons into the Treasury Building?<br/>5 A. Yes.<br/>6 Q. Did he have authority to clear people into<br/>7 press conferences?<br/>8 A. I don't know. Not -- you know. There<br/>9 wasn't a formal policy that I was aware of on<br/>10 clearing people in to press conferences, other than<br/>11 media.<br/>12 Q. Before you talked to Mr. Malvey about Mr.<br/>13 Davis on October 31, had you ever discussed with<br/>14 Mr. Malvey who should or should not be allowed to<br/>15 attend Treasury press conferences?<br/>16 A. No. Never.<br/>17 Q. And so that would include you never<br/>18 discussed with Mr. Malvey who should or should not<br/>19 be allowed to attend quarterly refunding press<br/>20 conferences. Right?<br/>21 A. Right.<br/>22 Q. Do you know Jill Usely?</p> | <p>1 that?<br/>2 MS. WILLIAMS: Objection.<br/>3 A. I don't know how to answer that question. I<br/>4 would want to be informed of anyone who's attending<br/>5 my press conferences.<br/>6 BY MR. THEODOROU:<br/>7 Q. You would have liked to have known that Mr.<br/>8 Davis was attending your press conferences. Right?<br/>9 A. Yes.<br/>10 MS. WILLIAMS: Objection.<br/>11 BY MR. THEODOROU:<br/>12 Q. Would you have liked to know that Mr. Davis<br/>13 was attending the press conference on October 31?<br/>14 A. Yes.<br/>15 (FRATTO Exhibit Number 9 was marked for<br/>16 identification.)<br/>17 BY MR. THEODOROU:<br/>18 Q. Before we get to that, let's go back to your<br/>19 Exhibit 1. Now, there's some exhibits attached to<br/>20 Exhibit 1 from the OIG. If you could turn to it,<br/>21 the last page of Exhibit 1. It's a November 15th,<br/>22 2001 letter from Megan Hills to Mr. Andrew Sporkin</p> |

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| <p style="text-align: right;">Page 178</p> <p>1 of the Securities and Exchange Commission.<br/> 2 Do you see that?<br/> 3 <b>A. Yes.</b><br/> 4 Q. Now, if you look at that, if you look at<br/> 5 that page. Have you seen this letter before?<br/> 6 <b>A. Yes.</b><br/> 7 Q. And do you see where it says, "Dear Mr.<br/> 8 Sporkin, pursuant to the SEC's request to clarify<br/> 9 it, I contacted Tony Fratto regarding his quote in<br/> 10 the November 15, 2001 Wall Street Journal piece by<br/> 11 Gregory Zuckerman. As reported in the column, Mr.<br/> 12 Fratto was quoted as saying, 'It's likely that<br/> 13 others in the past.' And then the reporter<br/> 14 paraphrased the remainder of the statement is, to<br/> 15 say that, have participated in press briefings<br/> 16 though they weren't members of the press."<br/> 17 Do you see that?<br/> 18 <b>A. I do.</b><br/> 19 Q. Now, in that article -- by the way, I've<br/> 20 given you Exhibit 9. Have you seen that document<br/> 21 before?<br/> 22 <b>A. Yes.</b></p> | <p style="text-align: right;">Page 180</p> <p>1 weren't members of the press.<br/> 2 <b>MS. WILLIAMS:</b> Objection.<br/> 3 <b>A. Yeah. I mean, I think it's -- I think</b><br/> 4 <b>that's true.</b><br/> 5 <b>BY MR. THEODOROU:</b><br/> 6 Q. Okay.<br/> 7 <b>A. I mean.</b><br/> 8 Q. What did you base that statement on?<br/> 9 <b>A. Based on Paul Malvey's comment to me that,</b><br/> 10 <b>as explained in Megan Hill's letter that Peter</b><br/> 11 <b>Davis had attended quarterly refunding press</b><br/> 12 <b>conferences for some time.</b><br/> 13 Q. Did Mr. Malvey tell you about any other<br/> 14 nonpress individuals who had attended these<br/> 15 conferences?<br/> 16 <b>A. (Shaking head.)</b><br/> 17 Q. Is that a yes or a no?<br/> 18 <b>A. I'm sorry. That's a no.</b><br/> 19 Q. So Ms. Hill's letter was a clarification of<br/> 20 what you said in the Journal?<br/> 21 <b>A. Yes.</b><br/> 22 Q. Correct?</p>   |
| <p style="text-align: right;">Page 179</p> <p>1 Q. And that's the article that's talking about<br/> 2 Exhibit 9?<br/> 3 <b>A. Yes.</b><br/> 4 Q. November 15, 2001 the Wall Street Journal.<br/> 5 Do you see that?<br/> 6 <b>A. Yes.</b><br/> 7 Q. And there was is a quote in the middle of<br/> 8 page 1, "It's likely that others in the past have<br/> 9 participated in press briefings though they weren't<br/> 10 members of the press," said Tony Fratto, a<br/> 11 spokesman for the Treasury Department.<br/> 12 <b>A. (Nodding head.)</b><br/> 13 Q. Correct?<br/> 14 <b>A. Yes.</b><br/> 15 Q. Now, this statement in the Wall Street<br/> 16 Journal, was that correct?<br/> 17 <b>MS. WILLIAMS:</b> Objection.<br/> 18 <b>A. Is what correct, exactly?</b><br/> 19 <b>BY MR. THEODOROU:</b><br/> 20 Q. Well, it says here the statement that others<br/> 21 had attended. It is likely that others in the past<br/> 22 have participated in press briefings though they</p>   | <p style="text-align: right;">Page 181</p> <p>1 <b>A. Yes.</b><br/> 2 Q. And what you say in Ms. Hill's letter says,<br/> 3 Mr. Fratto says he meant that given that Mr. Davis<br/> 4 had been admitted by the prior administration for<br/> 5 years, he found it highly unlikely that someone<br/> 6 else may have wandered in during the past<br/> 7 administration.<br/> 8 Correct?<br/> 9 <b>A. Correct.</b><br/> 10 Q. Do you know of anybody else who may have<br/> 11 wandered in?<br/> 12 <b>A. I don't.</b><br/> 13 Q. You are speculating here?<br/> 14 <b>A. Yes.</b><br/> 15 Q. Based on the fact that someone, that Mr.<br/> 16 Davis had attended a number of these press<br/> 17 conferences?<br/> 18 <b>A. Based on the fact that I was told that he</b><br/> 19 <b>had attended a number of press conferences.</b><br/> 20 Q. All right. Well, isn't it accurate that, in<br/> 21 Ms. Hill's letter, when she said that someone else<br/> 22 may have wandered in during the past</p> |

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|--|--|
| <p>1 administration, he had wandered in also during the</p> <p>2 current administration?</p> <p>3 MS. WILLIAMS: Objection.</p> <p>4 A. That's possible. Yeah. I don't know, I</p> <p>5 don't have independent knowledge of Peter Davis's</p> <p>6 attendance at any Treasury quarterly refunding</p> <p>7 announcement. What I know is that he attended the</p> <p>8 one on October 31st because he admitted to that.</p> <p>9 And then I have the information that Paul Malvey</p> <p>10 told me that he was in attendance that day and had</p> <p>11 attended in the past, including -- and he was</p> <p>12 specific about the previous administration. He had</p> <p>13 said the previous administration had allowed Peter</p> <p>14 Davis to attend. Now, I don't know whether that</p> <p>15 was allowed or wanted him to attend or permitted</p> <p>16 him to attend or what the nature of it was, but</p> <p>17 Paul Malvey in his conversation with me was very</p> <p>18 specific, the previous administration had allowed</p> <p>19 Peter Davis to attend quarterly refunding</p> <p>20 announcements. So that's what my quote is based</p> <p>21 on.</p> <p>22 BY MR. THEODOROU:</p> | <p>1 Whatever else we did wrong that day, we didn't</p> <p>2 clear in Peter Davis. And I was pretty happy about</p> <p>3 that. I was also, you know, very cognizant of the</p> <p>4 fact that, you know, we were going to be spending</p> <p>5 some time answering questions on the events of that</p> <p>6 day with general counsel and others, and I actually</p> <p>7 didn't want to have a whole lot of knowledge of</p> <p>8 what the nature of Peter Davis's attendance was. I</p> <p>9 figured someone will ask Paul and Paul can answer</p> <p>10 for it but I'm not going to answer for him.</p> <p>11 Q. So he didn't tell you why he let him in?</p> <p>12 A. I told you everything of -- everything that</p> <p>13 Paul told me about Peter Davis, I just told you.</p> <p>14 Q. All right.</p> <p>15 A. Yeah.</p> <p>16 Q. If you would turn to Exhibit 9.</p> <p>17 Do you see on the first page, this is</p> <p>18 written November 15, 2001, this Wall Street</p> <p>19 article. It says -- well, beginning on the first</p> <p>20 paragraph. It says, "The Treasury Department,</p> <p>21 facing criticism after an industry consultant</p> <p>22 attended a press only briefing last month and</p> |
| Page 183   | Page 185   |
| <p>1 Q. And what do you mean by, previous</p> <p>2 administration?</p> <p>3 A. The Treasury secretaries during the Clinton</p> <p>4 administration.</p> <p>5 Q. Do you know, did Mr. Malvey tell you --</p> <p>6 A. Let me -- just previous administration. I</p> <p>7 don't really care previous administration or not.</p> <p>8 It's immaterial to me. I'm not being -- in saying</p> <p>9 that, I'm not trying to be critical of the previous</p> <p>10 administration. That wasn't my point then, either.</p> <p>11 Q. Do you know whether Peter Davis attended the</p> <p>12 May and August 2001 conferences?</p> <p>13 A. I don't know. Even honestly, today, if I</p> <p>14 was walking down the street and someone said Peter</p> <p>15 Davis walked by, I wouldn't know. I don't know</p> <p>16 what he looks like or have never met him.</p> <p>17 Q. Did Mr. Malvey tell you why he allowed Mr.</p> <p>18 Davis to attend the conference?</p> <p>19 A. When Paul Malvey told me that his office</p> <p>20 cleared in Peter Davis, he heaved a huge sigh of</p> <p>21 relief that the Office of Public Affairs didn't</p> <p>22 clear in Peter Davis for some bizarre reason.</p>      | <p>1 leaked market moving news yesterday, outlined new</p> <p>2 rules to try to keep its news under wraps."</p> <p>3 Do you see that?</p> <p>4 A. I do.</p> <p>5 Q. "The changes, which some bond traders said</p> <p>6 were overdo, will bring the Treasury more in line</p> <p>7 with the way other government agencies, including</p> <p>8 the Federal Reserve and the Labor Department,</p> <p>9 release market sensitive news."</p> <p>10 Do you see that?</p> <p>11 A. I do.</p> <p>12 Q. All right. And then further on, about the</p> <p>13 fifth paragraph, "Some of the changes are quite</p> <p>14 elementary. Now, for instance, instead of</p> <p>15 releasing information to the press an hour or so</p> <p>16 before it is publicly available, the Department is</p> <p>17 shortening the embargo period to a matter of</p> <p>18 minutes, bringing the Treasury in line with the way</p> <p>19 Federal Reserve operates."</p> <p>20 Do you see that?</p> <p>21 A. I do.</p> <p>22 Q. And then the next paragraph, "In addition,</p>  |

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|---|---|
| <p style="text-align: right;">Page 186</p> <p>1 the Treasury will require that people attending its</p> <p>2 briefings now show press credentials to get into</p> <p>3 the room as the Labor Department does."</p> <p>4 Do you see that?</p> <p>5 <b>A. I do.</b></p> <p>6 Q. "Until now, a simple piece of information</p> <p>7 was enough."</p> <p>8 And that's what it says. Right?</p> <p>9 <b>A. That's what it says.</b></p> <p>10 Q. Now, these were some of the procedures that</p> <p>11 were implemented after October 31?</p> <p>12 <b>A. Yes.</b></p> <p>13 Q. All right. So Treasury procedures were --</p> <p>14 <b>A. I'm not stipulating to the accuracy of some</b></p> <p>15 <b>of the -- for example, you know, I don't know what</b></p> <p>16 <b>the reporter's referring to, until now a simple</b></p> <p>17 <b>piece of identification was enough. I mean.</b></p> <p>18 Q. Okay.</p> <p>19 <b>A. That's obviously understating access to an</b></p> <p>20 <b>event in the Treasury Department. You know, a</b></p> <p>21 <b>simple piece of paper, and a Secret Service</b></p> <p>22 <b>background check.</b></p> | <p style="text-align: right;">Page 188</p> <p>1 MS. WILLIAMS: I'm sorry, and the Labor</p> <p>2 Department?</p> <p>3 MR. THEODOROU: Let me backtrack.</p> <p>4 BY MR. THEODOROU:</p> <p>5 Q. When the changes were made at Treasury after</p> <p>6 October 31 --</p> <p>7 <b>A. Yes.</b></p> <p>8 Q. -- did you become familiar with the</p> <p>9 procedures used by the Federal Reserve for handling</p> <p>10 market sensitive information in press conferences?</p> <p>11 <b>A. I was abundantly aware of the handling of</b></p> <p>12 <b>Federal Reserve information, because the Treasury</b></p> <p>13 <b>pressroom handles Federal Reserve information.</b></p> <p>14 Q. And how about the Labor Department? Did you</p> <p>15 ever become of the Labor Department?</p> <p>16 <b>A. No. I'm told that they do a lockdown, but I</b></p> <p>17 <b>never -- I never have talked to Labor about it or</b></p> <p>18 <b>witnessed it.</b></p> <p>19 Q. But Treasury's, at some point did you learn</p> <p>20 after October 31 that the way the quarterly</p> <p>21 refunding press conference was handled, the release</p> <p>22 of the information and the embargo was different</p>   |
| <p style="text-align: right;">Page 187</p> <p>1 Q. But as to the reference, Treasury's</p> <p>2 procedures were inconsistent with the way at least</p> <p>3 the Federal Reserve and the Department of Labor</p> <p>4 handled market sensitive information. Correct?</p> <p>5 <b>A. Yeah.</b></p> <p>6 MS. WILLIAMS: Objection.</p> <p>7 BY MR. THEODOROU:</p> <p>8 Q. Is that right?</p> <p>9 MS. WILLIAMS: Objection.</p> <p>10 <b>A. Can you ask it again?</b></p> <p>11 <b>BY MR. THEODOROU:</b></p> <p>12 Q. The Treasury Department's procedures for the</p> <p>13 quarterly refunding press conferences were</p> <p>14 inconsistent with the way the Department of Labor</p> <p>15 released market sensitive information.</p> <p>16 MS. WILLIAMS: Objection.</p> <p>17 <b>A. I don't really know how the Department of</b></p> <p>18 <b>Labor does theirs.</b></p> <p>19 <b>BY MR. THEODOROU:</b></p> <p>20 Q. Were you familiar with the procedures used</p> <p>21 by the Federal Reserve and Labor Department?</p> <p>22 <b>A. Yeah. It happens in the Treasury pressroom.</b></p>  | <p style="text-align: right;">Page 189</p> <p>1 than other agencies?</p> <p>2 MS. WILLIAMS: Objection.</p> <p>3 <b>A. No. In fact, I made -- we made the changes</b></p> <p>4 <b>to -- we made these two changes in particular to</b></p> <p>5 <b>deal with what were exposed as possible weaknesses.</b></p> <p>6 <b>Clearly, you know, we wanted to make sure that</b></p> <p>7 <b>people knew that if we're going to do a press</b></p> <p>8 <b>conference, aside from Treasury staff or authorized</b></p> <p>9 <b>individuals in the room, we needed to know about</b></p> <p>10 <b>it, and we were going to have a policy on who</b></p> <p>11 <b>attends Treasury press conferences.</b></p> <p>12 <b>I didn't go around and ask other departments</b></p> <p>13 <b>or agencies how they did their procedures. It</b></p> <p>14 <b>wasn't -- it just wasn't -- that wasn't the problem</b></p> <p>15 <b>that was trying that we were trying to fix.</b></p> <p>16 <b>BY MR. THEODOROU:</b></p> <p>17 Q. And after October 31, though, Treasury did</p> <p>18 develop a written procedure?</p> <p>19 <b>A. Yes.</b></p> <p>20 Q. Now, what's the procedure for creating?</p> <p>21 What was the procedure for creating a press release</p> <p>22 for the quarterly refunding press conference as of</p> |

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|--|---|
| <p>1 October 31?</p> <p>2 A. For creating it?</p> <p>3 Q. Yeah. How was it created?</p> <p>4 A. Well, I'm not there for inception, so you</p> <p>5 would have to talk to the guys in the Office of</p> <p>6 Domestic Finance on where they begin with the</p> <p>7 draft. Where Public Affairs comes into it is very</p> <p>8 late in the process, where there is a relatively</p> <p>9 final draft and it's relatively late in the</p> <p>10 process. So within days of the actual press</p> <p>11 conference, sometimes not even until the night</p> <p>12 before a press conference will Public Affairs</p> <p>13 actually see the press release. So in that case we</p> <p>14 are a final eye on the press release and, you know,</p> <p>15 we don't -- we sign off on anything that gets</p> <p>16 disseminated publicly at Treasury, so I insist on</p> <p>17 having public affairs review anything before it</p> <p>18 goes out. But that might just be hours before it</p> <p>19 goes out. For other things, it could be days or</p> <p>20 weeks.</p> <p>21 Q. So on October 31, for the October 31 press</p> <p>22 conference, do you know who provided the Office of</p> | <p>1 spelling. So I have an opportunity to edit it,</p> <p>2 whether it needs it or not.</p> <p>3 Q. Did you edit Mr. Fisher's statement that was</p> <p>4 going out on October 31?</p> <p>5 A. I read it before it went out. I don't</p> <p>6 remember if I suggested any changes or edits.</p> <p>7 Q. Does anyone in your office review the final</p> <p>8 document before it is distributed to the press at</p> <p>9 the press conference?</p> <p>10 A. It always -- someone in my office always</p> <p>11 reviews the document before it's distributed, or at</p> <p>12 least we always try to.</p> <p>13 Q. Did anyone review the document before it was</p> <p>14 distributed to the press on October 31st?</p> <p>15 A. I didn't review it. I don't know if Betsy</p> <p>16 did.</p> <p>17 Q. So you don't know if Betsy reviewed Mr.</p> <p>18 Fisher's statement before it was distributed?</p> <p>19 A. Betsy reviewed Peter's statement that day.</p> <p>20 I reviewed Peter's statement that day. Yes. But</p> <p>21 whether we reviewed the document that was handed</p> <p>22 out at the press conference, I don't know.</p> |
| Page 191   | Page 193  |
| <p>1 Public Affairs with the statement to be released?</p> <p>2 A. I don't know specifically. I mean, I know</p> <p>3 from the group of individuals from where it would</p> <p>4 have come, but I don't know specifically who did</p> <p>5 it.</p> <p>6 Q. Where would it have come from?</p> <p>7 A. It would have come either directly from</p> <p>8 Peter Fisher, Tim Bitsberger. I recall actually</p> <p>9 from seeing an e-mail yesterday that Tim Bitsberger</p> <p>10 sent the final, but I don't know if there had been</p> <p>11 a previous one shared in any way. And that was on</p> <p>12 the morning of October 31st.</p> <p>13 Q. And who drafted?</p> <p>14 A. So Brian, Tim, Jeff Hoothor, again Paul</p> <p>15 Malvey, Peter Fisher. Those. And his -- Peter's</p> <p>16 senior adviser at the time. Do you recall his</p> <p>17 name? Jared? Jared Gross. Jared Gross.</p> <p>18 Q. And that were with what office, this group?</p> <p>19 A. Office of Domestic Finance.</p> <p>20 Q. Do you edit the statement?</p> <p>21 A. I would review the statement for any -- you</p> <p>22 know, any glaring errors and certainly for grammar,</p>                     | <p>1 Q. But you did not review the document that</p> <p>2 went out at the press conference.</p> <p>3 A. No.</p> <p>4 Q. Correct? And you don't know --</p> <p>5 A. It was handed to me at the press conference.</p> <p>6 Q. And you don't know whether Ms. Holahan</p> <p>7 reviewed that document that was handed out at the</p> <p>8 press conference?</p> <p>9 A. I don't know.</p> <p>10 Q. Does anybody review it before it is posted</p> <p>11 on the Web site?</p> <p>12 A. Yes.</p> <p>13 Q. Who?</p> <p>14 A. That's the same. It's the same. Whatever</p> <p>15 the final document is before it goes to the Web</p> <p>16 site. There's usually a final draft, someone will</p> <p>17 mark a draft final. And so before we would send it</p> <p>18 to Frances Anderson, for example, for posting and</p> <p>19 distribution, we would take a final read on it.</p> <p>20 Q. Did you review the document of Mr. Fisher's</p> <p>21 statement that went out on the Web site?</p> <p>22 A. I reviewed the text of that document. So I</p>  |

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|  |   |
|--|---|
| <p style="text-align: right;">Page 194</p> <p>1 reviewed the final draft of that document. I don't</p> <p>2 recall reviewing it in its -- you know, the same</p> <p>3 document that was sent to Frances for posting was</p> <p>4 sent to me. I read it, saw no problems with it,</p> <p>5 and let the system go.</p> <p>6 Q. Do you recall reviewing the document in the</p> <p>7 form that it went on the Web site?</p> <p>8 A. I don't know how that's possible. I'm not</p> <p>9 sure what you're -- I'm not sure that I know what</p> <p>10 you're asking. I mean, we're talking about an</p> <p>11 electronic copy of a document. It was e-mailed to</p> <p>12 me in a Word Perfect -- in a Word, sorry, format.</p> <p>13 I read it, and I don't think I had any edits or</p> <p>14 changes to it. I know that that document was</p> <p>15 forwarded to Frances Anderson for posting. I trust</p> <p>16 that she cut and paste the content of that document</p> <p>17 on to the web platform for posting. That's all I</p> <p>18 can say.</p> <p>19 Q. But you received a copy of the document at</p> <p>20 the pressroom as to what was distributed to the</p> <p>21 press? You received the document that was</p> <p>22 distributed?</p> | <p style="text-align: right;">Page 196</p> <p>1 A. I don't know if I saw it before yesterday,</p> <p>2 but I saw it yesterday.</p> <p>3 Q. Okay. And who is Tim Bitsberger?</p> <p>4 A. At the time, he was the deputy assistant</p> <p>5 secretary for financial markets.</p> <p>6 Q. And what was Ms. Anderson's job at the time?</p> <p>7 A. You know, administrative. I can't remember</p> <p>8 her exact title, but she's an administrative</p> <p>9 staffer with the Office of Public Affairs.</p> <p>10 Q. Public information coordinator?</p> <p>11 A. That sounds right.</p> <p>12 Q. At the time?</p> <p>13 A. It's hard to keep track.</p> <p>14 Q. I'm learning. Did she directly report to</p> <p>15 you?</p> <p>16 A. Yes, she did.</p> <p>17 Q. What were her responsibilities again?</p> <p>18 A. Her responsibilities included handling mail,</p> <p>19 phone calls, posting documents to the Internet,</p> <p>20 helping to set up rooms for press conferences,</p> <p>21 clearing in members of the media for interviews.</p> <p>22 So that range.</p> |
| <p style="text-align: right;">Page 195</p> <p>1 A. Yeah.</p> <p>2 (FRATTO Exhibit Number 10 was marked for</p> <p>3 identification.)</p> <p>4 BY MR. THEODOROU:</p> <p>5 Q. Mr. Fratto, you have before you Exhibit 10?</p> <p>6 A. Yes.</p> <p>7 Q. It's an e-mail. At the top, it's an e-mail</p> <p>8 from Betsy Holahan October 31st, 2001, 8:41 a.m. to</p> <p>9 Frances Anderson. Have you seen that?</p> <p>10 A. Yes.</p> <p>11 Q. And when was the last time you saw this</p> <p>12 document?</p> <p>13 A. Yesterday.</p> <p>14 Q. And below that there's a message from Tim</p> <p>15 Bitsberger to Peter Fisher, Betsy Holahan, Paul</p> <p>16 Malvey, Jared Gross. And who is Jared Gross?</p> <p>17 A. He was Peter Fisher's senior adviser.</p> <p>18 Q. And it says, subject, final version.</p> <p>19 Correct?</p> <p>20 A. Yes.</p> <p>21 Q. All right. Have you seen this document</p> <p>22 before?</p>   | <p style="text-align: right;">Page 197</p> <p>1 Q. Is this the final version of the Fisher</p> <p>2 statement?</p> <p>3 A. On the next page?</p> <p>4 Q. Yes.</p> <p>5 A. Yeah. This looks like the Word version of</p> <p>6 the document that I would have seen that morning in</p> <p>7 exactly this way.</p> <p>8 Q. Ms. Holahan says in this, please format and</p> <p>9 e-mail a formatted copy back to me.</p> <p>10 A. Yes.</p> <p>11 Q. What does Ms. Holahan want Ms. Anderson to</p> <p>12 do?</p> <p>13 MS. WILLIAMS: Objection.</p> <p>14 A. When she's asking for a formatted copy,</p> <p>15 she's asking for a copy of it on letterhead and</p> <p>16 with the date time and contact.</p> <p>17 BY MR. THEODOROU:</p> <p>18 Q. What kind of letterhead?</p> <p>19 A. I don't know what Betsy's asking for</p> <p>20 specifically. But if she's asking it to be</p> <p>21 e-mailed, she's probably asking for the electronic</p> <p>22 letterhead.</p>  |

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|---|--|
| <p>1 Q. All right. Let me show you the next</p> <p>2 document.</p> <p>3 (FRATTO Exhibit Number 11 was marked for</p> <p>4 identification.)</p> <p>5 BY MR. THEODOROU:</p> <p>6 Q. Now, I'm showing you now what's been marked</p> <p>7 as Exhibit 11. Have you seen this document before?</p> <p>8 A. Yes, I have.</p> <p>9 Q. And this is a series of e-mails. At the top</p> <p>10 there's an e-mail from you to Betsy Holahan and a</p> <p>11 series of other people, correct, at 8:53 a.m.?</p> <p>12 A. That's correct.</p> <p>13 Q. And it says, "Here's a copy with Treasury</p> <p>14 letterhead suitable for e-mail or fax." Correct?</p> <p>15 A. Correct.</p> <p>16 Q. Now, this starts with Mr. Bitsberger's, the</p> <p>17 one we just looked at, his e-mail to Peter Fisher,</p> <p>18 Betsy Holahan, Paul Malvey, Jared Gross on October</p> <p>19 31st at 8:39. Correct?</p> <p>20 A. Correct.</p> <p>21 Q. Where it says file:NOVQ-final.doc, D-O-C?</p> <p>22 A. Right.</p> | <p>1 as is. Sorry."</p> <p>2 Do you see that?</p> <p>3 A. Yes.</p> <p>4 Q. Now, when she refers to Frances, Ms. Holahan</p> <p>5 is referring to Frances Anderson?</p> <p>6 A. Yes.</p> <p>7 Q. And do you know what the formatting problem</p> <p>8 was?</p> <p>9 A. It's possible that she didn't have the</p> <p>10 electronic, the soft copy of the letterhead.</p> <p>11 Q. And what is soft copy.</p> <p>12 A. It's an electronic copy of the --</p> <p>13 Q. Of the letterhead?</p> <p>14 A. Of the letterhead. Yeah.</p> <p>15 Q. And the letterhead would be the Treasury</p> <p>16 Building or what is called Treasury News? Aren't</p> <p>17 there two forms of letterhead, one with a picture</p> <p>18 of the Department of Treasury?</p> <p>19 A. That's the electronic right there.</p> <p>20 Q. And the other is Treasury News?</p> <p>21 A. And that's on pre-printed paper.</p> <p>22 Q. So when you're talking about soft copy,</p>                           |
| Page 199  | Page 201   |
| <p>1 Q. And then next is an e-mail from Betsy</p> <p>2 Holahan to a series of people at 8:46 a.m., it says</p> <p>3 Peter's statement. Do you see that?</p> <p>4 A. Yes.</p> <p>5 Q. And she says in her statement at 8:46 a.m.,</p> <p>6 Paul, JT. Who is JT?</p> <p>7 A. JT Young.</p> <p>8 Q. And who is JT Young?</p> <p>9 A. JT was in legislative affairs at the time.</p> <p>10 Q. And Tim, it says Delaney?</p> <p>11 A. Yeah.</p> <p>12 Q. Is that Tim Delaney?</p> <p>13 A. Tim Delaney, yeah.</p> <p>14 Q. And who is he?</p> <p>15 A. Tim is the director of the office of -- we</p> <p>16 call it the markets office. It was a market, it</p> <p>17 was the market room.</p> <p>18 Q. Now, what she said to them in this e-mail</p> <p>19 that got forwarded to you, "Please e-mail to your</p> <p>20 key people at 10:00 a.m. today, not before.</p> <p>21 Frances says she cannot format this into an</p> <p>22 electronic file with Treasury letterhead, so send</p>          | <p>1 you're talking about the Department of Treasury</p> <p>2 letterhead?</p> <p>3 A. Yes.</p> <p>4 Q. With the building?</p> <p>5 A. With the building.</p> <p>6 Q. So in your message, on 8:53 a.m. you wrote?</p> <p>7 "Here's a copy suitable for e-mail or fax."</p> <p>8 Do you see that?</p> <p>9 A. I do.</p> <p>10 Q. What did you do? You attached a version of</p> <p>11 Fisher's statement to that e-mail?</p> <p>12 A. I'm sure that's what I did, yeah. Probably</p> <p>13 with that electronic letterhead.</p> <p>14 Q. And said, the document name is in small type</p> <p>15 at the bottom of your e-mail message. Right?</p> <p>16 A. Yes.</p> <p>17 Q. And you see where it says NOVQ-final, plus,</p> <p>18 then there's a dot, and then it says doc?</p> <p>19 A. Yes.</p> <p>20 Q. That's the same document name used by Tim</p> <p>21 Bitsberger in his message at 8:39 to Peter Fisher,</p> <p>22 Betsy Holahan, Paul Malvey, and Jared Gross, excep</p> |

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|--|--|
| <p>1 you had a plus added.</p> <p>2 <b>A. Yes.</b></p> <p>3 Q. What does the plus mean?</p> <p>4 <b>A. Probably to distinguish it as the one with</b></p> <p>5 <b>letterhead now.</b></p> <p>6 Q. Where you put Treasury letterhead on it?</p> <p>7 <b>A. Yeah. I'm presuming that's what I meant by</b></p> <p>8 <b>it.</b></p> <p>9 Q. Let me show you Exhibit 12.</p> <p>10 (FRATTO Exhibit Number 12 was marked for</p> <p>11 identification.)</p> <p>12 <b>BY MR. THEODOROU:</b></p> <p>13 Q. Do you see that, Mr. Fratto?</p> <p>14 <b>A. I do.</b></p> <p>15 Q. Have you seen this document before that I'm</p> <p>16 showing you?</p> <p>17 <b>A. Yes.</b></p> <p>18 Q. Is that the document that you attached to</p> <p>19 your e-mail message?</p> <p>20 <b>A. I presume it is. It looks like it is.</b></p> <p>21 Q. Now, how did you create this document?</p> <p>22 <b>A. Let me begin by saying I don't actually</b></p>   | <p>1 <b>small shop at public affairs, and we're frequently</b></p> <p>2 <b>helping each other on these kinds of things. So</b></p> <p>3 <b>sometimes it's whoever is sitting at a desk and</b></p> <p>4 <b>able to make a last-minute edit or get something to</b></p> <p>5 <b>Frances or down to the pressroom, you're asking one</b></p> <p>6 <b>of our colleagues to do that all of the time.</b></p> <p>7 Q. And you recall putting in embargoed until</p> <p>8 10:00 a.m. on this document?</p> <p>9 <b>MS. WILLIAMS: Objection.</b></p> <p>10 <b>A. I don't specifically recall doing it, but I</b></p> <p>11 <b>would expect that I did. I probably did.</b></p> <p>12 <b>BY MR. THEODOROU:</b></p> <p>13 Q. Let's go back to your e-mail that says -- on</p> <p>14 your e-mail that says, "Here's a copy with Treasury</p> <p>15 letterhead suitable for e-mail or fax."</p> <p>16 So when you're talking about Treasury</p> <p>17 letterhead, it's the letterhead on Exhibit 12</p> <p>18 you're talking about?</p> <p>19 <b>A. Yes. It could only be that document.</b></p> <p>20 Q. And is this the document suitable for e-mail</p> <p>21 or fax?</p> <p>22 <b>A. That document would be suitable for e-mail</b></p> |
| Page 203   | Page 205   |
| <p>1 <b>remember sitting at my computer and doing this.</b></p> <p>2 <b>But what I would suspect I did was to add language</b></p> <p>3 <b>on the embargo time.</b></p> <p>4 Q. So let's take a look. You're looking at</p> <p>5 Exhibit 10.</p> <p>6 <b>A. Yes.</b></p> <p>7 Q. With the attached statement of Mr. Fisher.</p> <p>8 Correct?</p> <p>9 <b>A. That's right.</b></p> <p>10 Q. That was sent by Mr. Bitsberger to Betsy</p> <p>11 Holahan and other people?</p> <p>12 <b>A. That's right.</b></p> <p>13 Q. Correct?</p> <p>14 <b>A. Yes.</b></p> <p>15 Q. And you sent that at 8:39. And I'm showing</p> <p>16 you now Exhibit 12, and you're saying you did what</p> <p>17 to the document?</p> <p>18 <b>A. I added the embargo time, the date, the</b></p> <p>19 <b>contact information, and the soft copy letterhead.</b></p> <p>20 Q. Okay. Now, why did you create this document</p> <p>21 and Holahan or Anderson did not?</p> <p>22 <b>A. I think it's not unusual. We're a pretty</b></p> | <p>1 <b>or fax. Yes.</b></p> <p>2 Q. But is this the document that you --</p> <p>3 <b>A. I think so. Yeah.</b></p> <p>4 Q. All right.</p> <p>5 <b>THE VIDEOGRAPHER: This concludes tape three</b></p> <p>6 <b>in the deposition of Tony Fratto. Off the record</b></p> <p>7 <b>at 3:05:45.</b></p> <p>8 (Recess taken.)</p> <p>9 <b>THE VIDEOGRAPHER: This begins tape four in</b></p> <p>10 <b>the deposition of Tony Fratto. On the record at</b></p> <p>11 <b>3:18:30.</b></p> <p>12 <b>BY MR. THEODOROU:</b></p> <p>13 Q. Mr. Fratto, were copies of the quarterly</p> <p>14 refunding statement normally handed out at a press</p> <p>15 conference, quarterly refunding press conference?</p> <p>16 <b>A. And you're asking me if that was usual, and</b></p> <p>17 <b>I don't know if it was usual. I think we had done</b></p> <p>18 <b>it at the May 2nd one. I can't recall what we did</b></p> <p>19 <b>at the August 1st one.</b></p> <p>20 Q. And you also did it at the October 31st one.</p> <p>21 Correct?</p> <p>22 <b>A. And we did it at the October 31st one.</b></p>  |

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|---|--|
| <p>1 <b>Right.</b></p> <p>2 Q. And when is the statement handed out? At</p> <p>3 what point? Before the conference begins, at the</p> <p>4 end of the conference? Or is it simply made</p> <p>5 available to be picked up?</p> <p>6 MS. WILLIAMS: Objection.</p> <p>7 BY MR. THEODOROU:</p> <p>8 Q. I'll rephrase it. How was it distributed?</p> <p>9 A. <b>How was it distributed that day. I believe</b></p> <p>10 <b>it was distributed at the beginning of the press</b></p> <p>11 <b>conference.</b></p> <p>12 Q. By whom?</p> <p>13 A. <b>I think Frances and Betsy.</b></p> <p>14 Q. And how did they distribute it?</p> <p>15 A. <b>By hand, walking through the room.</b></p> <p>16 Q. And what kind of letterhead was used on the</p> <p>17 version, the statement that was distributed?</p> <p>18 A. <b>I don't remember.</b></p> <p>19 <b>(FRATTO Exhibit Number 13 was marked for</b></p> <p>20 <b>identification.)</b></p> <p>21 BY MR. THEODOROU:</p> <p>22 Q. I'm going to show you, Mr. Fratto, what's</p>                            | <p>1 document?</p> <p>2 A. <b>I remember being told that there was this</b></p> <p>3 <b>other document and I was told that day, but I don't</b></p> <p>4 <b>remember if I was told that that was the one that</b></p> <p>5 <b>was handed out at the press conference.</b></p> <p>6 Q. Have you ever seen the document that was</p> <p>7 handed out at the press conference?</p> <p>8 A. <b>Yes.</b></p> <p>9 Q. And is this a copy of that document?</p> <p>10 A. <b>I don't know.</b></p> <p>11 Q. Did the copy of the document that was handed</p> <p>12 out at the press conference state "for immediate</p> <p>13 release"?</p> <p>14 A. <b>I don't remember.</b></p> <p>15 Q. Has anyone told you that the document stated</p> <p>16 "for immediate release"?</p> <p>17 A. <b>Betsy told me that there was a second</b></p> <p>18 <b>document, you know, a second press release that</b></p> <p>19 <b>Frances had prepared that had "for immediate</b></p> <p>20 <b>release" on it. I don't remember which one was</b></p> <p>21 <b>distributed at the press conference.</b></p> <p>22 Q. Do you know why Ms. Anderson included the</p> |
| Page 207  | Page 209   |
| <p>1 been marked as Exhibit 15. You've seen that</p> <p>2 document before. Right?</p> <p>3 A. <b>13. Yes.</b></p> <p>4 Q. I'm sorry, 13. You've seen that document</p> <p>5 before. Right?</p> <p>6 A. <b>Yes.</b></p> <p>7 Q. And you saw that yesterday when you were</p> <p>8 preparing for your deposition?</p> <p>9 A. <b>Yes.</b></p> <p>10 Q. Is this the version of Mr. Fisher's</p> <p>11 statement that was distributed at the press</p> <p>12 conference that day, on October 31st, 2001?</p> <p>13 A. <b>I don't know.</b></p> <p>14 Q. Did you ever see the -- did you ever see a</p> <p>15 copy of what was distributed that day? Have you</p> <p>16 ever seen a copy?</p> <p>17 A. <b>Well, I was handed a copy at the press</b></p> <p>18 <b>conference, but I can't say that I looked at it</b></p> <p>19 <b>closely enough to remember which version it was.</b></p> <p>20 Q. All right. Did you ever learn that the</p> <p>21 version that was distributed at the press</p> <p>22 conference said "for immediate release" on the</p> | <p>1 caption "for immediate release" on the statement</p> <p>2 that she prepared?</p> <p>3 A. <b>I don't.</b></p> <p>4 Q. Do you know if anybody at Treasury ever told</p> <p>5 her about the 10:00 a.m. embargo time?</p> <p>6 A. <b>I told Frances about the 10:00 a.m. embargo</b></p> <p>7 <b>time.</b></p> <p>8 Q. You told Frances yourself that day about it?</p> <p>9 A. <b>Yeah.</b></p> <p>10 Q. When did you tell her about it?</p> <p>11 A. <b>That morning in the suite, that there's a</b></p> <p>12 <b>10:00 embargo on the press conference.</b></p> <p>13 Q. About what time did you tell her?</p> <p>14 A. <b>I couldn't give a precise time, but it was</b></p> <p>15 <b>when -- the best range I could put it in is</b></p> <p>16 <b>probably between 8:30 and 8:45.</b></p> <p>17 Q. Was anybody else present when you told her</p> <p>18 this?</p> <p>19 A. <b>I don't know.</b></p> <p>20 Q. And what did she say?</p> <p>21 A. <b>I don't remember her specific words. She</b></p> <p>22 <b>heard me. She acknowledged that in some way, that</b></p>  |

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|--|--|
| <p>1 she heard what I said.</p> <p>2 Q. What specifically do you recall telling her?</p> <p>3 A. I asked Frances if she had -- if she had</p> <p>4 what she needed for the press conference. Are we</p> <p>5 all set up? Because I was going up to Peter</p> <p>6 Fisher's office. I said, do you have what we need?</p> <p>7 Yeah. And, you're going to be ready to post this</p> <p>8 at 10:00. Right? And she acknowledged in some</p> <p>9 way, I don't remember the exact words, yes, she's</p> <p>10 ready to post it at 10:00.</p> <p>11 Q. And did you use the word embargo time to</p> <p>12 her?</p> <p>13 A. I don't remember specifically using the word</p> <p>14 embargo time.</p> <p>15 Q. Do you remember telling her that she was</p> <p>16 going -- excuse me, I don't want to put words in</p> <p>17 your mouth. If I'm wrong, correct me; I'm sure you</p> <p>18 will. Do you remember telling her to post at</p> <p>19 10:00?</p> <p>20 A. Yes. That, I definitely remember that.</p> <p>21 Q. But you do not recall tell her anything</p> <p>22 about an embargo time?</p> | <p>1 A. Because -- why is what? Why would --</p> <p>2 Q. In other words, if someone didn't attend the</p> <p>3 press conference --</p> <p>4 A. Could I e-mail them a copy with an embargo</p> <p>5 time?</p> <p>6 Q. Yes.</p> <p>7 A. Yes.</p> <p>8 Q. Could you do that?</p> <p>9 A. That day?</p> <p>10 Q. Did you do that on October 31st?</p> <p>11 A. I don't recall doing that. I wouldn't be</p> <p>12 surprised if I did, but I don't think I did and I</p> <p>13 don't have any recollection of it.</p> <p>14 Q. Had you done it in the past for the</p> <p>15 refunding conferences; that is, you e-mailed the</p> <p>16 statement that was going to be distributed at the</p> <p>17 conference to those who weren't attending?</p> <p>18 A. I have. I know that I've done it countless</p> <p>19 times for many different kinds of events. I don't</p> <p>20 have a specific recollection of ever doing it for a</p> <p>21 quarterly refunding announcement.</p> <p>22 Q. Okay. Do you know whether Ms. Holahan did</p> |
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| <p>1 A. I don't remember.</p> <p>2 Q. Do you recall using the word "embargo" with</p> <p>3 her?</p> <p>4 A. I don't remember.</p> <p>5 Q. Do you recall ever telling her to make sure</p> <p>6 she put the word embargo in the statement that she</p> <p>7 was posting?</p> <p>8 A. I don't remember doing that.</p> <p>9 Q. Do you recall telling her that she should</p> <p>10 put the word embargo in the statement that was</p> <p>11 being distributed at the press conference?</p> <p>12 A. No. I don't recall doing that.</p> <p>13 Q. Do you know if Ms. Holahan told her to put</p> <p>14 the word embargo in the statement going into the</p> <p>15 press conference?</p> <p>16 A. I don't know.</p> <p>17 Q. Did the Treasury -- as of October 2001, did</p> <p>18 the Treasury have any policies of providing</p> <p>19 embargoed information directly to press outlets by</p> <p>20 means other than press conferences?</p> <p>21 A. That wouldn't be unusual.</p> <p>22 Q. Why is that?</p>  | <p>1 that on October 31, sending a statement before the</p> <p>2 10:00 a.m. embargo?</p> <p>3 A. I don't know.</p> <p>4 Q. To --</p> <p>5 A. I don't know.</p> <p>6 (FRATTO Exhibit Number 14 was marked for</p> <p>7 identification.)</p> <p>8 BY MR. THEODOROU:</p> <p>9 Q. Do you see Exhibit 14?</p> <p>10 A. I do.</p> <p>11 Q. Have you seen this exhibit before?</p> <p>12 A. No.</p> <p>13 Q. It's a series of e-mails. Correct?</p> <p>14 A. Yes.</p> <p>15 Q. Do you know any of these people? Betsy</p> <p>16 Holahan is sending a series of e-mails.</p> <p>17 A. Yes.</p> <p>18 Q. Do you know who these people are?</p> <p>19 A. I know just about all these.</p> <p>20 Q. All right. Who is Chip Aiken?</p> <p>21 A. As it says, Chip was -- I'm not sure whether</p> <p>22 he still is -- a producer at CNBC.</p>  |

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|---|---|
| <p>1 Q. And Jonathan Fuerbringer?</p> <p>2 A. <b>New York Times.</b></p> <p>3 Q. Greg Ip?</p> <p>4 A. <b>Journal.</b></p> <p>5 Q. He's at the Wall Street Journal?</p> <p>6 A. <b>Yes.</b></p> <p>7 Q. And Robert Nichols was at the Office of</p> <p>8 Public Affairs?</p> <p>9 A. <b>Yes.</b></p> <p>10 Q. So he worked for Treasury?</p> <p>11 A. <b>Yes.</b></p> <p>12 Q. So each of the documents has a notation for</p> <p>13 the attachment, NOVQ-FINAL, in capital letters,</p> <p>14 plus.doc. Do you see that?</p> <p>15 A. <b>Yes.</b></p> <p>16 Q. And that's the same document that you</p> <p>17 attached to your e-mail at 8:53 that day. Right?</p> <p>18 A. <b>Yes.</b></p> <p>19 Q. And that was the version of Fisher's</p> <p>20 statement with the soft letterhead with the picture</p> <p>21 of Treasury Building?</p> <p>22 A. <b>Yes.</b></p>   | <p>1 A. <b>I don't know.</b></p> <p>2 Q. Do you know whether she told these reporters</p> <p>3 that she sent the statement to that they were not</p> <p>4 to disclose it to anybody before 10:00 a.m.?</p> <p>5 A. <b>They have a -- in the subject line, it says</b></p> <p>6 <b>in capital letters, embargoed until 10:00 a.m. And</b></p> <p>7 <b>if she sent the document that is marked there, she</b></p> <p>8 <b>sent them the document with the embargoed times</b></p> <p>9 <b>stated on it.</b></p> <p>10 Q. Ms. Holahan, you testified about Ms. Holahan</p> <p>11 at the quarterly refunding press conference on</p> <p>12 October 31st, correct, earlier? She was there.</p> <p>13 Right?</p> <p>14 A. <b>Yes.</b></p> <p>15 Q. Was that the first quarterly refunding press</p> <p>16 conference she had ever organized?</p> <p>17 A. <b>Yes.</b></p> <p>18 Q. Do you know whether she had ever attended</p> <p>19 one before?</p> <p>20 A. <b>I don't recall specifically.</b></p> <p>21 Q. Were you concerned about her lack of</p> <p>22 experience?</p>                                 |
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| <p>1 Q. And you have that document in front of you.</p> <p>2 Right?</p> <p>3 A. <b>I have it in front of me, the other</b></p> <p>4 <b>document.</b></p> <p>5 Q. Right. Do you know why she was sending</p> <p>6 these -- and that's Exhibit 12, the one that you</p> <p>7 had put the picture of the Treasury Building on.</p> <p>8 Right?</p> <p>9 A. <b>Um-hmm.</b></p> <p>10 Q. Is that a yes?</p> <p>11 A. <b>Yes.</b></p> <p>12 Q. Okay. Do you know why she was sending a</p> <p>13 copy of that document to these various media</p> <p>14 persons before the 10:00 a.m. embargo time?</p> <p>15 A. <b>I don't know specifically. Although I can</b></p> <p>16 <b>presume, but you can just as easily ask Betsy.</b></p> <p>17 <b>This is the first I've known she did it.</b></p> <p>18 Q. Did you send Mr. Fisher's statement to any</p> <p>19 other media before 10:00 a.m.?</p> <p>20 A. <b>I don't recall doing that. I don't think</b></p> <p>21 <b>so.</b></p> <p>22 Q. Did anybody else besides Ms. Holahan do it?</p> | <p>1 A. <b>No.</b></p> <p>2 Q. Okay. After the conference ended, you said</p> <p>3 you then went to Mr. Fisher's office?</p> <p>4 A. <b>Yes.</b></p> <p>5 Q. Do you know where Frances Anderson was</p> <p>6 during the press conference?</p> <p>7 A. <b>I don't know specifically.</b></p> <p>8 Q. Were there charts outside of the room for</p> <p>9 reporters to pick up?</p> <p>10 A. <b>Charts? It's possible. I don't recall. I</b></p> <p>11 <b>was asked that question yesterday also. I don't</b></p> <p>12 <b>remember.</b></p> <p>13 Q. You were asked that also? Did they have a</p> <p>14 transcript in front of you while they were asking</p> <p>15 these questions?</p> <p>16 A. <b>No.</b></p> <p>17 Q. All right. So you went back to Mr. Fisher's</p> <p>18 office on October 31. Then what happened?</p> <p>19 A. <b>I went to Peter's office and just remarked</b></p> <p>20 <b>on the press conference, and just noting that there</b></p> <p>21 <b>wasn't, you know, weren't a whole lot of questions.</b></p> <p>22 <b>Went downstairs back to my desk. And I knew that I</b></p> |

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|---|--|
| <p>1 had other business that day in my portfolio dealing<br/>2 with the international side that I was looking at,<br/>3 so I wanted to take some time to look at some<br/>4 things I needed to read and look at some press<br/>5 lists. So I went on-line, and just wanted to wait<br/>6 until 10:00 when the news broke and see, you know,<br/>7 see what the stories were.</p> <p>8 So I was at my desk, and was told that Brian<br/>9 Roseborough and Tim Bitsberger and I think Jeff<br/>10 Hoothier were out in the main suite out front where<br/>11 Frances was, and I think Frances buzzed me. And I<br/>12 can't remember the specific time, it was probably<br/>13 9:45, you, know, somewhere in that range, that they<br/>14 were in there saying something about the news<br/>15 getting out. And so I came out and said, you know,<br/>16 what's up? And they said that, you know, people<br/>17 are saying that the news got out early and that,<br/>18 you know, that we posted the -- we posted the<br/>19 statement early. And then there was some confusion<br/>20 because there was discussion over whether --<br/>21 actually, now that I think about it, it must have<br/>22 been a little bit later because the confusion was</p> | <p>1 And so I said, "So you posted it?" And she said,<br/>2 "Yeah. I thought it was supposed to go out." And<br/>3 someone else said, "Yeah, but no, there was<br/>4 something else at 9:30 or somewhere around the 9:30<br/>5 range." And I said, "Look, if we posted it, then<br/>6 we posted it, that's a problem. But I don't know<br/>7 anything about 9:30." And just then Glenn, I<br/>8 remember Glen Somerville walking in. I seem to<br/>9 think Marty Krutsinger was with him, also. But<br/>10 Glenn Somerville came up and said, "Tony, we have<br/>11 to, we have to let our stories go. You guys posted<br/>12 the statement early."</p> <p>13 Q. Somerville was from where?<br/>14 A. Reuters. And I said -- and I could see on<br/>15 France's screen that it was posted. I could see,<br/>16 you know, she had it on her screen that it was<br/>17 posted. And I said, "Glenn, go. Get your story<br/>18 out. Go get it out." And I don't know whether he<br/>19 was telling me -- I can't remember if he was<br/>20 telling me that he already sent it out or now I'm<br/>21 giving him authority to send it out. You know. I<br/>22 think he was just informing me that they need to</p> |
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| <p>1 over whether they were talking about us posting the<br/>2 statement or whether it had to do with some, you<br/>3 know, chatter in the markets about news coming out<br/>4 about the announcement prior to the release. So<br/>5 we're --</p> <p>6 Q. And who are you talking to at this time?<br/>7 A. Bitsberger, Roseborough, and Jeff Hoothier,<br/>8 who my recollection is that those three there.<br/>9 There might have been somebody else there, also,<br/>10 but I seem to remember those three.</p> <p>11 Q. At what time?<br/>12 A. Sometime between 9:45 and 10:00. There is<br/>13 some time mark somewhere on whenever the statement<br/>14 was actually posted. It was after the statement<br/>15 was actually posted, because it was a question of<br/>16 whether it was -- what we were talking about.<br/>17 Because someone was throwing around the word leak.<br/>18 There was a leak. And then they said, yeah, we<br/>19 posted the statement. And I said -- I said, wait.<br/>20 We posted the statement. And then Frances was<br/>21 sitting there, and said, "What happened?" And<br/>22 Frances said, "I thought it was supposed to go."</p>   | <p>1 get it out before -- or they're getting it out<br/>2 before the embargo because we posted it already.<br/>3 And I said, "Yes, get it out. And tell the<br/>4 pressroom everyone can get it out." You know,<br/>5 essentially I'm lifting the embargo.</p> <p>6 Q. You said this to whom?<br/>7 A. Glenn Somerville.<br/>8 Q. Who was from?<br/>9 A. Reuters.<br/>10 Q. And was Jonathan Nichols from Reuters, too?<br/>11 A. Yeah. Jonathan might have been there. I<br/>12 remember specifically talking to Glenn. He's just<br/>13 the one I remember walking in.</p> <p>14 Q. What did Frances say at that conversation?<br/>15 A. I could tell that Frances was pretty upset.<br/>16 You know, she's got a lot of bunch of senior<br/>17 officials in her office, you know, talking about<br/>18 something bad that happened that she was involved<br/>19 in. And I didn't want to talk to her about it<br/>20 specifically with the others there because I could<br/>21 see that it was -- she was really upset. You know.<br/>22 And I said, "Just hold on, guys. Let's, you know,</p>  |

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1 let's sort this out and just figure out what the  
 2 heck, what happened here. And if we made a  
 3 mistake, we made a mistake, and there's nothing we  
 4 can do about that. It's done. Let's lift the  
 5 embargo and so it's out." And then it was, you  
 6 know, somebody else said, "Yeah. But what happened  
 7 at 9:30?" And it was at that point that somebody  
 8 walked in with a chart, a Bloomberg chart and said,  
 9 you know, "Something moved the markets at 9:30."  
 10 And I said, "I don't know anything, I don't know  
 11 anything about that. I didn't hear anything, I  
 12 didn't see anything. You know, if we released it  
 13 early at whatever that specific time was, we did,  
 14 it was a mistake, I'm sorry, but there's nothing we  
 15 can do about it now. It's just out there."  
 16 Q. Did Frances say why she had put it on the  
 17 Web site before 10:00?  
 18 A. All she said to me was, "I thought it was  
 19 supposed to go out." You know, she just -- and  
 20 repeated it a couple times. "I thought it was  
 21 supposed to go out. I thought it was supposed to  
 22 go out." And I said, "It's okay, we'll talk about

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1 it later. It's okay. Just, you know, let's make  
 2 sure you get it out to everybody."  
 3 Q. Did you talk to her about it later?  
 4 A. Afterwards? Oh, yes.  
 5 Q. And what did she say?  
 6 A. She said the same thing. She said, "I  
 7 didn't -- you know." I said, "But, Frances, we did  
 8 talk about -- I said we did talk about, you know,  
 9 that it shouldn't be posted until 10:00." And she  
 10 said, "I know, I just -- I wasn't -- I got it  
 11 loaded up, and I just did the next thing that I  
 12 always do, which is just to -- I posted it. I  
 13 just, I wasn't thinking."  
 14 Q. But she posted it at what time?  
 15 A. I don't remember.  
 16 Q. Did she say?  
 17 A. There is a record somewhere of the exact  
 18 time. I don't know what the exact time was.  
 19 Q. Do you --  
 20 A. And then talked about it subsequently with  
 21 her and sort of -- you know, we do reviews, and we  
 22 talked about it in reviews about the importance of

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1 being especially careful and those types of things.  
 2 That's all. She hasn't done it since, to my  
 3 knowledge.  
 4 Q. Did you learn that she had passed out the  
 5 statement where it said "for immediate release"  
 6 from her?  
 7 MS. WILLIAMS: Objection.  
 8 A. I don't remember. You mean did she tell me  
 9 that? I don't remember. I'm not even sure at that  
 10 -- you're talking about at that time after that  
 11 meeting in my office?  
 12 BY MR. THEODOROU:  
 13 Q. Yes.  
 14 A. No. I don't remember. I didn't know at  
 15 that point in time. It was later than that that I  
 16 found out.  
 17 Q. Do you know who Brian Collins is?  
 18 A. I know the name.  
 19 Q. Okay. He's a columnist for the National  
 20 Mortgage News. Have you heard of that?  
 21 A. I've heard of National Mortgage News. I  
 22 don't know much about them.

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1 Q. Did you ever know that -- did you ever  
 2 become aware that about 9:35 a.m. on October 31st,  
 3 Collins called Janice Smith, an official at Fannie  
 4 Mae, and told her about the Treasury's decision to  
 5 call the 30-year bond?  
 6 A. No.  
 7 MS. WILLIAMS: Objection.  
 8 BY MR. THEODOROU:  
 9 Q. You never learned about that?  
 10 A. No.  
 11 MS. WILLIAMS: Objection.  
 12 A. This is the first I've heard about that.  
 13 BY MR. THEODOROU:  
 14 Q. You never became aware of Mr. Collins making  
 15 calls about Mr. Fisher's statement?  
 16 A. No.  
 17 MS. WILLIAMS: Objection.  
 18 BY MR. THEODOROU:  
 19 Q. You never became aware of Mr. Collins making  
 20 calls about Mr. Fisher's statement before 10:00  
 21 a.m. that day?  
 22 MS. WILLIAMS: Objection.

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|---|--|
| <p>1 A. I didn't find out about him making calls<br/>2 about the official statement until you telling me<br/>3 right now.</p> <p>4 BY MR. THEODOROU:</p> <p>5 Q. Did you ever learn that at least nine<br/>6 additional persons learned about the decision by<br/>7 9:50 a.m. that day?</p> <p>8 MS. WILLIAMS: Objection.</p> <p>9 BY MR. THEODOROU:</p> <p>10 Q. Treasury's?</p> <p>11 A. No.</p> <p>12 Q. Had Mr. Collins, who is a reporter, released<br/>13 the information about 9:35 a.m.?</p> <p>14 A. Was he a reporter?</p> <p>15 Q. He's a reporter, and he released it at 9:35.</p> <p>16 A. Was he a reporter?</p> <p>17 Q. He was a reporter.</p> <p>18 A. I want to verify that he was in fact a<br/>19 reporter.</p> <p>20 Q. So you have another person who wasn't a<br/>21 reporter at the press conference?</p> <p>22 MS. WILLIAMS: Objection.</p>  | <p>1 Q. Had you seen it before?</p> <p>2 A. I don't think so.</p> <p>3 Q. All right. Take a look at it. Is this the<br/>4 version of Mr. Fisher's statement that went out on<br/>5 the Web site?</p> <p>6 A. I don't know.</p> <p>7 Q. Well, does it refresh your recollection when<br/>8 you look at the bottom?</p> <p>9 A. Oh, yeah.</p> <p>10 Q. In fact, it says it's the Treasury Web site<br/>11 there?</p> <p>12 A. Yes.</p> <p>13 Q. And this particular version says "for<br/>14 immediate release." Doesn't it?</p> <p>15 A. It does.</p> <p>16 Q. Did Frances Anderson ever tell you why she<br/>17 put "for immediate release" on the document?</p> <p>18 A. Well, she was — she's never told me. No.<br/>19 I can make a point that having a release or an<br/>20 embargo guidance on a document on the Web site is<br/>21 inconsequential because it's live when it's posted.<br/>22 It doesn't matter whether you say for release or</p> |
| Page 227  | Page 229   |
| <p>1 A. I don't know. I don't know that he was at<br/>2 the press conference.</p> <p>3 BY MR. THEODOROU:</p> <p>4 Q. Do you know whether Treasury ever took any<br/>5 action against Brian Collins?</p> <p>6 A. This is the first I've learned that Brian<br/>7 Collins did something that we would object to. So<br/>8 — or may have done something.</p> <p>9 Q. Do you know if Treasury ever reprimanded any<br/>10 individuals for their conduct on October 31st?</p> <p>11 A. No. Or, I don't know, I should say.</p> <p>12 Q. Did you ever see the version of Mr. Fisher's<br/>13 statement printed on the Web site?</p> <p>14 A. Yes.</p> <p>15 Q. You looked at it?</p> <p>16 A. Yeah.</p> <p>17 (FRATTO Exhibit Number 15 was marked for<br/>18 identification.)</p> <p>19 BY MR. THEODOROU:</p> <p>20 Q. I'm showing you what's been marked as<br/>21 Exhibit 15. Do you see that document?</p> <p>22 A. I do.</p> | <p>1 not for release.</p> <p>2 Q. It's out in the public domain?</p> <p>3 A. Yeah.</p> <p>4 Q. And is that the case when it gets on the<br/>5 server?</p> <p>6 MS. WILLIAMS: Objection.</p> <p>7 A. When it gets on the server?</p> <p>8 BY MR. THEODOROU:</p> <p>9 Q. Yeah. Once it's posted to the server.</p> <p>10 MS. WILLIAMS: Objection.</p> <p>11 A. When it's posted to the public space where<br/>12 it can be accessed by someone in the public, that's<br/>13 when it's matters.</p> <p>14 BY MR. THEODOROU:</p> <p>15 Q. Let me show you what's being marked as<br/>16 Exhibit 16.</p> <p>17 (FRATTO Exhibit Number 16 was marked for<br/>18 identification.)</p> <p>19 BY MR. THEODOROU:</p> <p>20 Q. I want to direct your attention to Exhibit<br/>21 16. Do you see the document that's before you?</p> <p>22 A. I do.</p>  |

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|---|---|
| <p>1 Q. Have you seen it before?</p> <p>2 A. Yes.</p> <p>3 Q. And what is it?</p> <p>4 A. It's a statement from the Office of Public</p> <p>5 Affairs just commenting on what happened that</p> <p>6 morning.</p> <p>7 Q. And who prepared this document?</p> <p>8 A. I did.</p> <p>9 Q. And was it posted to the Web site at</p> <p>10 Treasury?</p> <p>11 A. It was.</p> <p>12 Q. Now, at the time this was released in</p> <p>13 October 31st, 2001, about what time of day was this</p> <p>14 released?</p> <p>15 A. I don't remember.</p> <p>16 Q. Now, in this document you state, "The</p> <p>17 announcement was inadvertently posted in the</p> <p>18 Treasury Web site at approximately 9:50 a.m.</p> <p>19 Treasury regrets that this occurred and will work</p> <p>20 to ensure the integrity of the announcement</p> <p>21 process."</p> <p>22 Do you see that?</p>  | <p>1 Correct?</p> <p>2 MS. WILLIAMS: Objection.</p> <p>3 A. I don't know if someone had or hadn't. But</p> <p>4 I wasn't aware of a specific time at that time.</p> <p>5 BY MR. THEODOROU:</p> <p>6 Q. But the time you state in here, 9:50, was</p> <p>7 based on your discussion with Ms. Anderson.</p> <p>8 Correct?</p> <p>9 A. Yes.</p> <p>10 Q. And what she said she thought she put it on</p> <p>11 at 9:50?</p> <p>12 A. Yes. That's why, I mean, I used the word</p> <p>13 approximately, because I wasn't certain of the</p> <p>14 specific time.</p> <p>15 Q. And subsequent to this, you learned that the</p> <p>16 Fisher statement was posted on the Internet before</p> <p>17 9:50.</p> <p>18 MS. WILLIAMS: Objection.</p> <p>19 A. I have heard that it was something like</p> <p>20 9:47, 9:48. Something like that.</p> <p>21 BY MR. THEODOROU:</p> <p>22 Q. Did you learn on October 31 or after October</p>                        |
| Page 231  | Page 233  |
| <p>1 A. I do.</p> <p>2 Q. Actually, let's put the whole thing into</p> <p>3 context. It says, "Following Treasury's quarterly</p> <p>4 refunding press conference this morning, it came to</p> <p>5 our attention that the content of the announcement</p> <p>6 was made public prior to the 10:00 a.m. embargo.</p> <p>7 The announcement was inadvertently posted on the</p> <p>8 Treasury Web site at approximately 9:50 a.m.</p> <p>9 Treasury regrets that this occurred and will work</p> <p>10 to ensure the integrity of the announcement</p> <p>11 process."</p> <p>12 Do you see that?</p> <p>13 A. I do.</p> <p>14 Q. What was the basis for you stating that it</p> <p>15 was inadvertently posted on the Web site at</p> <p>16 approximately 9:50?</p> <p>17 A. My conversation with Frances.</p> <p>18 Q. And what did she say?</p> <p>19 A. She said that she posted it, and she thought</p> <p>20 it was at around 9:50.</p> <p>21 Q. So at that time, Treasury had not done a</p> <p>22 complete review of the computer server system.</p> | <p>1 31 that it was posted earlier than 9:50?</p> <p>2 A. I don't remember.</p> <p>3 MS. WILLIAMS: Objection.</p> <p>4 BY MR. THEODOROU:</p> <p>5 Q. You don't remember whether it was on October</p> <p>6 31 or after October 31. Is that what you don't</p> <p>7 remember?</p> <p>8 A. Yes, that's right.</p> <p>9 Q. But at some point, you learned after this</p> <p>10 statement went out on the Web site that --</p> <p>11 A. There was a --</p> <p>12 Q. -- Mr. Fisher's statement was posted on the</p> <p>13 Web site before 9:50?</p> <p>14 A. At some point after this statement went out,</p> <p>15 I was told that.</p> <p>16 Q. And after October 31st, did Treasury make</p> <p>17 changes in how it handled quarterly refunding press</p> <p>18 conferences?</p> <p>19 A. Yes.</p> <p>20 Q. What changes were made?</p> <p>21 A. We decided to release the statement in the</p> <p>22 Treasury pressroom. We essentially decided to</p> |

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| <p style="text-align: right;">Page 234</p> <p>1 de-link press conference from the release of the<br/> 2 statements. So we released the statement first in<br/> 3 the Treasury pressroom, and then the press<br/> 4 conference is held an hour later. So the statement<br/> 5 is down in the Treasury pressroom for release at<br/> 6 9:00 a.m., and the press conference is held at<br/> 7 10:00.<br/> 8 Q. Any other changes?<br/> 9 A. We try to keep a closer watch on who's in<br/> 10 our press conferences, although it's not quite as<br/> 11 important at that time since the news has already<br/> 12 been released. But we keep a tighter rein on all<br/> 13 of our press conferences.<br/> 14 Q. Was there any change in whether the<br/> 15 attendees were to be press members or members of<br/> 16 the public?<br/> 17 A. They can be members -- basically, the Office<br/> 18 of Public Affairs has complete authority on who<br/> 19 attends a press conference. So even if policy<br/> 20 staff within Treasury, if general counsel wants to<br/> 21 attend a press conference, they need to ask our<br/> 22 permission.</p> | <p style="text-align: right;">Page 236</p> <p>1 announcement goes public -- the announcement of the<br/> 2 conference goes on the Web site. Correct?<br/> 3 MS. WILLIAMS: Objection.<br/> 4 A. It's saying we will post the announcement.<br/> 5 The announcement, meaning the statement of the<br/> 6 quarterly refunding --<br/> 7 BY MR. THEODOROU:<br/> 8 Q. That it's going to take place?<br/> 9 MS. WILLIAMS: Objection.<br/> 10 A. No. That's referring to the statement. To<br/> 11 the news.<br/> 12 BY MR. THEODOROU:<br/> 13 Q. The statement would go out at 9:00. So it<br/> 14 goes public at 9:00?<br/> 15 A. That's exactly right.<br/> 16 Q. And the announcement also will be delivered<br/> 17 to credentialed members of the media in the<br/> 18 Treasury pressroom shortly before 9:00 a.m. with<br/> 19 lockdown embargo rules.<br/> 20 Correct?<br/> 21 A. Correct.<br/> 22 Q. So the difference between this and the</p>         |
| <p style="text-align: right;">Page 235</p> <p>1 (FRATTO Exhibit Number 17 was marked for<br/> 2 identification.)<br/> 3 BY MR. THEODOROU:<br/> 4 Q. Mr. Fratto, let me show you what's been<br/> 5 marked as Exhibit 17. Do you see that?<br/> 6 A. I do.<br/> 7 Q. Have you seen that document before?<br/> 8 A. Yes.<br/> 9 Q. And what is it?<br/> 10 A. It's our statement on procedures for<br/> 11 quarterly refunding announcements.<br/> 12 Q. And when did this set of procedures go into<br/> 13 effect?<br/> 14 A. January 30th of 2002.<br/> 15 Q. Now, according to this, if you look at the<br/> 16 second paragraph, it says, "Starting with the next<br/> 17 scheduled refunding announcement on January 30,<br/> 18 2002, Treasury's Office of Public Affairs will post<br/> 19 the announcement on the Treasury Web site at 9:00<br/> 20 a.m." Do you see that?<br/> 21 A. Yes.<br/> 22 Q. So the announcement, does that mean that the</p>  | <p style="text-align: right;">Page 237</p> <p>1 procedures that govern the prior conferences was<br/> 2 the announced -- you set a time at which the<br/> 3 announcement will go out. Right?<br/> 4 A. Yes.<br/> 5 MS. WILLIAMS: Objection.<br/> 6 A. Oh, I'm sorry. We set a time. In both<br/> 7 cases, we're setting a time.<br/> 8 BY MR. THEODOROU:<br/> 9 Q. But in this case, you said that the<br/> 10 announcement, beginning on January 30, 2002 would<br/> 11 go out at 9:00 a.m. Correct?<br/> 12 A. Yes.<br/> 13 Q. That announcement would also be delivered to<br/> 14 credentialed members of the media in the Treasury<br/> 15 pressroom shortly before 9:00 a.m. Correct?<br/> 16 A. Correct.<br/> 17 Q. It also says with lockdown embargo rules.<br/> 18 Do you see that?<br/> 19 A. Yes.<br/> 20 Q. And what did that mean?<br/> 21 A. That means that when we deliver the<br/> 22 documents to the Treasury pressroom, that they</p> |

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|---|---|
| <p>1 cannot leave the pressroom.</p> <p>2 Q. And there were no lockdown rules in effect</p> <p>3 before January 30th, 2002. Correct?</p> <p>4 A. That's correct.</p> <p>5 Q. And it says, "The traditional practice of</p> <p>6 releasing the quarterly refunding announcement at a</p> <p>7 news conference will be discontinued."</p> <p>8 Do you see that?</p> <p>9 A. Yes.</p> <p>10 Q. That meant that there would no longer --</p> <p>11 does that mean that there would no longer be a news</p> <p>12 conference?</p> <p>13 A. No. It just meant that the release of the</p> <p>14 statement and the news conference would be</p> <p>15 de-linked. That the events, they wouldn't occur in</p> <p>16 the same event.</p> <p>17 Q. So the statement, in contrast to October</p> <p>18 31st where a statement was released there and given</p> <p>19 to members of the media --</p> <p>20 A. And all previous quarterly refunding</p> <p>21 announcements, that I'm aware of.</p> <p>22 Q. Beginning on January 30, 2002, it would not</p> | <p>1 A. No. It's not necessary.</p> <p>2 BY MR. THEODOROU:</p> <p>3 Q. Can they call anybody else besides their</p> <p>4 editors at the media outlets?</p> <p>5 A. They can call members of their news</p> <p>6 organization. They can talk to each other.</p> <p>7 Q. So they can call anybody at their news</p> <p>8 organization?</p> <p>9 A. They can call anyone at their news</p> <p>10 organization.</p> <p>11 Q. When it says shortly before 9:00 a.m., what</p> <p>12 does that mean?</p> <p>13 A. That's purposefully ambiguous. It could be</p> <p>14 five minutes before, it could be 15 minutes before.</p> <p>15 We can decide.</p> <p>16 Q. And it's Treasury who decides this.</p> <p>17 Correct?</p> <p>18 A. Yes.</p> <p>19 Q. Not the press?</p> <p>20 A. No.</p> <p>21 Q. Now, have you taken the discretion away from</p> <p>22 the press with these new procedures?</p>   |
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| <p>1 be released to them at the press conference?</p> <p>2 A. That's right. They would have had it</p> <p>3 already.</p> <p>4 Q. Now, under these new policies, are reporters</p> <p>5 allowed to make telephone calls before 9:00 a.m.?</p> <p>6 A. You mean before 9:00 a.m. after receiving</p> <p>7 the document?</p> <p>8 Q. Yes.</p> <p>9 A. It depends on who they call.</p> <p>10 Q. But it doesn't state in here who they can</p> <p>11 call. Does it?</p> <p>12 A. No. That would be -- the rules of an</p> <p>13 embargo are the rules of an embargo.</p> <p>14 Q. But are they allowed to call someone?</p> <p>15 A. Who?</p> <p>16 Q. Before 9:00 a.m.?</p> <p>17 A. Who? It depends on who they may decide to</p> <p>18 call. Can they call a member of the general</p> <p>19 public? No. Can they call their editor? Yes.</p> <p>20 Q. And have you instructed members of the press</p> <p>21 that they can only call their editors?</p> <p>22 MS. WILLIAMS: Objection.</p>  | <p>1 MS. WILLIAMS: Objection.</p> <p>2 A. We've give the press exceptional discretion</p> <p>3 in setting embargoes. If you are asking about this</p> <p>4 specific case?</p> <p>5 BY MR. THEODOROU:</p> <p>6 Q. Yes.</p> <p>7 A. I would say we maintain control of the</p> <p>8 discretion as we have the discretion in October.</p> <p>9 Q. Well, in the case of quarterly refunding</p> <p>10 conferences, the press is no longer polled about</p> <p>11 what time the embargo or how long the embargo</p> <p>12 should be. Correct?</p> <p>13 A. The embargo is pre-set. The embargo is 9:00</p> <p>14 a.m. The question of how long they have the</p> <p>15 document before the embargo, that's completely at</p> <p>16 our discretion.</p> <p>17 Q. Now, under the new procedures, does an</p> <p>18 employee of Public Affairs explain the embargo</p> <p>19 policy when the press conference takes place at the</p> <p>20 quarterly refunding conferences?</p> <p>21 A. No. Not that I'm aware of.</p> <p>22 Q. Does anybody from the Office of Public</p> |

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|---|--|
| <p style="text-align: right;">Page 242</p> <p>1 Affairs define what embargo means to those<br/> 2 attending the conferences?<br/> 3 <b>A. No, we don't. As I said, it's not<br/> 4 necessary. An embargo is an embargo.</b><br/> 5 Q. An embargo's an embargo.<br/> 6 <b>A. Yeah.</b><br/> 7 Q. So today, the Treasury Department still<br/> 8 doesn't have any -- to your knowledge, anything in<br/> 9 writing that defines what embargo is?<br/> 10 <b>A. No.</b><br/> 11 MS. WILLIAMS: Objection.<br/> 12 BY MR. THEODOROU:<br/> 13 Q. Do you know whether the Treasury Department<br/> 14 has anything in writing that defines embargo?<br/> 15 <b>A. Not to my knowledge.</b><br/> 16 Q. Do you know whether the Treasury Department<br/> 17 has anything in writing that defines news embargo?<br/> 18 <b>A. I know of nothing at the Treasury Department<br/> 19 that defines a news embargo, nor do I think one is<br/> 20 necessary. A reporter knows what embargo means.</b><br/> 21 Q. Has anyone told you that embargo is the<br/> 22 defined differently by various agencies?</p> | <p style="text-align: right;">Page 244</p> <p>1 <b>A. Besides Treasury?</b><br/> 2 Q. Besides Treasury staff?<br/> 3 <b>A. I'm just not aware.</b><br/> 4 Q. What about at the October 31st, 2001<br/> 5 refunding conference?<br/> 6 <b>A. I don't recall.</b><br/> 7 Q. What about members of the Treasury Borrowing<br/> 8 Advisory Committee? Do you know if they were<br/> 9 allowed to attend the refunding conferences?<br/> 10 <b>A. I don't -- again, I don't recall that there<br/> 11 was a specific allowance, whether there was a<br/> 12 specific policy on it. I wouldn't be surprised if<br/> 13 they did, and I wouldn't have objected to them.<br/> 14 They are a part of the refunding process.</b><br/> 15 Q. If a Treasury Borrowing Advisory Committee<br/> 16 member attended, would you expect them to abide by<br/> 17 the embargo?<br/> 18 MR. THEODOROU: Objection.<br/> 19 <b>A. I personally expect anyone in the room to<br/> 20 abide by the embargo.</b><br/> 21 <b>BY MS. WILLIAMS:</b><br/> 22 Q. So that includes if they were employees from</p>               |
| <p style="text-align: right;">Page 243</p> <p>1 <b>A. No.</b><br/> 2 MR. THEODOROU: No further questions at this<br/> 3 time.<br/> 4 MS. WILLIAMS: Can we take a short break?<br/> 5 THE VIDEOGRAPHER: Off the record at<br/> 6 3:57:30.<br/> 7 (Recess taken.)<br/> 8 THE VIDEOGRAPHER: On the record at 4:12:19.<br/> 9 EXAMINATION<br/> 10 BY MS. WILLIAMS:<br/> 11 Q. Mr. Fratto, I have a few questions. Besides<br/> 12 the press, were employees from other government<br/> 13 agencies allowed to attend Treasury refunding<br/> 14 conferences?<br/> 15 MR. THEODOROU: Objection.<br/> 16 <b>A. I wouldn't be surprised if they did. I<br/> 17 don't recall having specific conversations about<br/> 18 it.</b><br/> 19 <b>BY MS. WILLIAMS:</b><br/> 20 Q. And do you know if any government employees<br/> 21 ever attended any Treasury refunding conferences<br/> 22 before October 31, 2001?</p>   | <p style="text-align: right;">Page 245</p> <p>1 other government agencies?<br/> 2 MR. THEODOROU: Objection.<br/> 3 <b>A. Yes.</b><br/> 4 <b>BY MS. WILLIAMS:</b><br/> 5 Q. And Treasury employees also?<br/> 6 <b>A. Yes.</b><br/> 7 Q. You consider the embargo to apply to them as<br/> 8 well?<br/> 9 <b>A. I expect the embargo to apply to anyone who<br/> 10 is within earshot of the direction given at the<br/> 11 press conference.</b><br/> 12 Q. Do you know how other government employees<br/> 13 who wish to attend Borrowing Advisory Committee<br/> 14 meetings were, what they were required to do to<br/> 15 gain entrance into those conferences?<br/> 16 <b>A. The only way -- the only way they could get<br/> 17 into the conference is to be cleared into the<br/> 18 building by someone at the Treasury Department. So<br/> 19 someone would have to clear them in. And either if<br/> 20 they knew where the room is, they would go to the<br/> 21 room. But my office was only involved in clearing<br/> 22 in members of the media, so I presume they did with</b></p> |

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| <p style="text-align: right;">Page 246</p> <p>1 their policy counterparts.</p> <p>2 Q. And when you say their policy counterparts,</p> <p>3 are you referring to other offices in Treasury</p> <p>4 besides the Office of Public Affairs?</p> <p>5 A. That's right.</p> <p>6 Q. During Mr. Theodorou's questioning, you</p> <p>7 discussed embargoes that were Treasury imposed, and</p> <p>8 then there were some embargoes that were imposed by</p> <p>9 the press. Is that accurate statement of your</p> <p>10 testimony?</p> <p>11 MR. THEODOROU: Objection.</p> <p>12 BY MS. WILLIAMS:</p> <p>13 Q. That sometimes Treasury imposed an embargo,</p> <p>14 and sometimes the press self-imposed an embargo?</p> <p>15 MR. THEODOROU: Objection.</p> <p>16 A. There were times when Treasury would impose</p> <p>17 the -- would state the time, a specific time for an</p> <p>18 embargo. There were other times that -- because</p> <p>19 the press always wants an embargo, that they would</p> <p>20 self-set an embargo on their own. And then there</p> <p>21 were times that it would happen within some</p> <p>22 negotiation between us and the reporters.</p>   | <p style="text-align: right;">Page 248</p> <p>1 uniformed -- at a uniformed time, so that it wasn't</p> <p>2 coming out from different outlets at different</p> <p>3 times. We didn't want to have -- we didn't want to</p> <p>4 create a situation where -- you know, there's</p> <p>5 nothing preventing us from giving the news to any</p> <p>6 specific news organization. We can choose to make</p> <p>7 that decision, and decide that all of our news is</p> <p>8 going to go to Bloomberg. But we don't want to</p> <p>9 pick favorites in terms of who delivers the news at</p> <p>10 what time. We don't want to get involved in that</p> <p>11 competitive relationship between, especially the</p> <p>12 financial wires, but all members of the media, and</p> <p>13 so we want to have a standard and predictable time</p> <p>14 for when news is disseminated and that all of the</p> <p>15 relevant news outlets get it and release it at the</p> <p>16 same time.</p> <p>17 BY MS. WILLIAMS:</p> <p>18 Q. Do you recall there ever being a Treasury</p> <p>19 refunding conference where Treasury decided it did</p> <p>20 not want to impose an embargo?</p> <p>21 MR. THEODOROU: Objection.</p> <p>22 A. No. I have never heard of one.</p>                                     |
| <p style="text-align: right;">Page 247</p> <p>1 BY MS. WILLIAMS:</p> <p>2 Q. My question is a little different. Not as</p> <p>3 to what the embargo time would be, but whether</p> <p>4 there would be an embargo at all. Were there times</p> <p>5 that Treasury decided there would be an embargo?</p> <p>6 A. Yes.</p> <p>7 Q. Were there times where the press themselves</p> <p>8 decided there would be an embargo?</p> <p>9 A. I'm sorry. Yes, there were times when we</p> <p>10 had an interest in absolutely setting an embargo.</p> <p>11 There were other times where we had -- we would</p> <p>12 have documents that, you know, it wasn't -- we</p> <p>13 didn't have a strong interest on whether there was</p> <p>14 an embargoed time set or not. So -- and so the</p> <p>15 reporters would announce that they would, on their</p> <p>16 own that they would like to have an embargo. So</p> <p>17 they would set their own embargo time.</p> <p>18 Q. What, if any, interest did Treasury have in</p> <p>19 setting an embargo, having an embargo with respect</p> <p>20 to Treasury refunding conferences?</p> <p>21 MR. THEODOROU: Objection.</p> <p>22 A. That the information would be released in a</p> | <p style="text-align: right;">Page 249</p> <p>1 BY MS. WILLIAMS:</p> <p>2 Q. And what kind of information was released by</p> <p>3 Treasury that Treasury would decide they did not</p> <p>4 want an embargo, did not feel one was necessary?</p> <p>5 MR. THEODOROU: Objection. Foundation.</p> <p>6 A. There were occasions where we would release</p> <p>7 a statement that, in our judgment, was after the</p> <p>8 fact of a news event. So we were maybe commenting</p> <p>9 on something that already happened, and it</p> <p>10 wasn't -- you know, it didn't involve the release</p> <p>11 of data or didn't involve a policy change, it was</p> <p>12 maybe just a statement on an event. In those</p> <p>13 cases, I could think of lots of them, there really</p> <p>14 wasn't market -- there really wasn't a market</p> <p>15 sensitive item from our perspective, probably not</p> <p>16 sensitive in any way, and we would walk, you know,</p> <p>17 the documents down to the pressroom and announce to</p> <p>18 them, just tell them here's a statement from me or</p> <p>19 the secretary or someone else. And they would say</p> <p>20 we would like to set an embargo. And I'd say fine.</p> <p>21 You know, if you want one, go right ahead.</p> <p>22 BY MS. WILLIAMS:</p> |

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| <p>1 Q. And I know that you also discussed the</p> <p>2 setting of embargo times. Sometimes the embargoed</p> <p>3 times would be set by the press. Is that an</p> <p>4 accurate statement?</p> <p>5 A. Yes.</p> <p>6 Q. And I believe on direct examination you used</p> <p>7 the term self-policing, the press?</p> <p>8 A. Self-enforcing.</p> <p>9 Q. Or self-enforcing. What do you mean by</p> <p>10 self-enforcing?</p> <p>11 A. I meant that all of the reporters, reporters</p> <p>12 who cover Treasury that I've ever dealt with are</p> <p>13 very aware of any potential infraction by their</p> <p>14 colleagues. And they don't want say, you know,</p> <p>15 sort of a dog eat dog world with them. But they're</p> <p>16 competitors and they watch what each other does, or</p> <p>17 news organizations watch what each other does. So</p> <p>18 if a news organization would break an embargo, you</p> <p>19 know, I would hear about it, but they would hear</p> <p>20 about it first. They would hear about it from each</p> <p>21 other. And they are very aware and cognizant of</p> <p>22 embargo times. They know that their -- if the</p>  | <p>1 would be to, you know, to fix -- if that problem</p> <p>2 existed, to fix that problem, but that you</p> <p>3 shouldn't presume that it wouldn't come without</p> <p>4 some costs. And that's one of the costs, is that</p> <p>5 stories would be written and that could have</p> <p>6 misinformation or inaccurate information or</p> <p>7 reported with little appropriate interpretation by</p> <p>8 the reporters.</p> <p>9 Q. I wanted to draw your attention to the May</p> <p>10 2001 Treasury refunding conference.</p> <p>11 A. Um-hmm.</p> <p>12 Q. And I believe you said that an embargo was</p> <p>13 set at that conference?</p> <p>14 A. It was.</p> <p>15 Q. And it was set at the end of the conference?</p> <p>16 A. Yes.</p> <p>17 Q. By polling the press to see how much time</p> <p>18 they needed?</p> <p>19 A. That's right.</p> <p>20 Q. Is that correct? Do you recall anyone in</p> <p>21 the room asking any questions about the embargo?</p> <p>22 A. No.</p> |
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| <p>1 Treasury press corps had a problem with dealing</p> <p>2 with embargoes, we would have absolutely no</p> <p>3 recourse but to stop giving them news in advance.</p> <p>4 Now, that wouldn't be optimal for us because</p> <p>5 we gain something from having reporters having</p> <p>6 sufficient time to thoughtfully look at the news</p> <p>7 they get and report it accurately, and help them on</p> <p>8 an occasion where during an embargo a reporter</p> <p>9 noticed an error in one of the numbers in the</p> <p>10 document, and we were able to correct that error</p> <p>11 before they print it. Now, I mean, they also</p> <p>12 printed that they found an error in our original</p> <p>13 document and that we had to correct it, but that's</p> <p>14 a much better case than having the error go out</p> <p>15 without any correction. I mean, so like we get</p> <p>16 something out of them, you know, looking at an</p> <p>17 embargo time.</p> <p>18 But if they had a problem dealing with</p> <p>19 embargoes, if they were constantly or even with any</p> <p>20 regularity breaking an embargo or releasing things</p> <p>21 outside the embargo time, we would have no choice</p> <p>22 but to just only deliver things live. And that</p> | <p>1 Q. Do you recall anyone asking what they were</p> <p>2 allowed to do with embargoed information at that</p> <p>3 May 2001 conference?</p> <p>4 A. No.</p> <p>5 MR. THEODOROU: Objection.</p> <p>6 BY MS. WILLIAMS:</p> <p>7 Q. Do you recall receiving any questions from</p> <p>8 any attendees regarding the embargo policies or</p> <p>9 procedures at the May 2001 conference?</p> <p>10 MR. THEODOROU: Objection.</p> <p>11 A. No.</p> <p>12 BY MS. WILLIAMS:</p> <p>13 Q. The Treasury refunding conferences, are they</p> <p>14 open to press that does not have space in the</p> <p>15 Treasury pressroom?</p> <p>16 A. Yes.</p> <p>17 Q. Do you know if any cameras were present at</p> <p>18 the May 2001 conference, May 2nd, 2001?</p> <p>19 A. I don't remember.</p> <p>20 Q. Do you recall if anyone broke the embargo at</p> <p>21 the May 2001 refunding conference?</p> <p>22 A. No. No one broke the embargo.</p>  |

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|---|---|
| <p>1 Q. What about the October 31st, 2001</p> <p>2 conference? Do you recall anyone calling prior to</p> <p>3 the conference but after the October 30th media</p> <p>4 advisory came out asking you questions about</p> <p>5 Treasury's embargoed policies or procedures?</p> <p>6 MR. THEODOROU: Objection.</p> <p>7 A. No.</p> <p>8 BY MS. WILLIAMS:</p> <p>9 Q. At that conference, do you recall any</p> <p>10 questions being asked about what embargo meant?</p> <p>11 MR. THEODOROU: Objection.</p> <p>12 A. I've never had a reporter ask me what an</p> <p>13 embargo meant.</p> <p>14 BY MS. WILLIAMS:</p> <p>15 Q. At the October 2001 refunding conference, do</p> <p>16 you recall anyone asking what Treasury's embargo</p> <p>17 procedures were?</p> <p>18 MR. THEODOROU: Objection.</p> <p>19 A. No.</p> <p>20 BY MS. WILLIAMS:</p> <p>21 Q. Do you recall if the doors were open during</p> <p>22 the October 31st 2001 Treasury refunding</p>  | <p>1 procedures for any other conferences besides</p> <p>2 Treasury refunding conferences after the October</p> <p>3 31st, 2001 conference?</p> <p>4 A. No.</p> <p>5 Q. Why not?</p> <p>6 A. Because we don't have any problem with</p> <p>7 embargoes. Even the new procedures for -- the new</p> <p>8 procedures for the quarterly refunding announcement</p> <p>9 wasn't specifically to fix an embargo problem. It</p> <p>10 was really to fix a room access problem. We</p> <p>11 separated the statement from the press conference</p> <p>12 and put in new procedures to -- you know, again,</p> <p>13 not really to fix a problem that had to do with our</p> <p>14 relationship with the news media, it had to do with</p> <p>15 people that were not -- you know, not in the news</p> <p>16 media. But we haven't had a reason to do it for</p> <p>17 any other events. We keep -- the only thing we do</p> <p>18 is keep a tighter rein and ensuring that we know</p> <p>19 who is in our events, and that we have authority on</p> <p>20 who is in our events. But we have never had a</p> <p>21 problem of embargoes with members of the news</p> <p>22 media.</p> |
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| <p>1 conference?</p> <p>2 A. I'm not sure that I can recall well enough</p> <p>3 to answer. I have a feeling that they were closed,</p> <p>4 but I don't know that I can say with absolute</p> <p>5 certainty.</p> <p>6 Q. Can I refer you to Exhibit 1. And before I</p> <p>7 ask you any questions about this, do you recall if</p> <p>8 anyone left the conference early?</p> <p>9 A. I don't recall anyone leaving it early.</p> <p>10 Q. And what about showing up late? Do you</p> <p>11 recall if anyone showed up to the October 31st,</p> <p>12 2001 conference late?</p> <p>13 A. I don't remember anybody walking in late.</p> <p>14 Q. Do you know if Betsy Holahan assigned anyone</p> <p>15 to watch the doors to keep people from leaving the</p> <p>16 room after the conference started?</p> <p>17 A. I don't know.</p> <p>18 Q. Do you recall seeing Tara Bradshaw at the</p> <p>19 October 2001 conference?</p> <p>20 A. I don't have a good memory of that, if she</p> <p>21 was or wasn't there.</p> <p>22 Q. Did Treasury make any changes to embargo</p> | <p>1 Q. So for --</p> <p>2 MR. THEODOROU: Objection.</p> <p>3 BY MS. WILLIAMS:</p> <p>4 Q. For conferences at Treasury, other than</p> <p>5 Treasury refunding conferences, after October 31st,</p> <p>6 2001, were there any lockdown procedures put in</p> <p>7 place for the release of information?</p> <p>8 A. I'm sorry. After October 31st?</p> <p>9 Q. After October 31st.</p> <p>10 A. Just for the quarterly refunding</p> <p>11 announcement statements, announcements.</p> <p>12 Q. Prior to coming to the Treasury, did you</p> <p>13 have an understanding of what an embargo was?</p> <p>14 A. Yes.</p> <p>15 Q. What did you understand embargo meant?</p> <p>16 A. An embargo means that the news media can't</p> <p>17 publish or broadcast information until the time</p> <p>18 specified by the embargo has expired.</p> <p>19 Q. How did you come to that understanding of</p> <p>20 what an embargo was?</p> <p>21 A. I think I first learned of it in a</p> <p>22 journalism class in 1987 at the University of</p>  |

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1 Pittsburgh, and then used and dealt with embargoes  
2 throughout my career.

3 Q. When you say you dealt with embargoes  
4 throughout your career, in what jobs did you deal  
5 with embargoes prior to coming to Treasury?

6 A. As a press secretary on Capitol Hill most  
7 extensively.

8 Q. Who was imposing embargoes that you were  
9 exposed to while you were a press secretary on  
10 Capitol Hill?

11 MR. THEODOROU: Objection.

12 A. Sometimes we would impose our own embargoes,  
13 but frequently we had embargoes associated with  
14 major speeches that occurred on Capitol Hill,  
15 testimony that would be given that we would have  
16 access to and that reporters would have access to,  
17 but it would be embargoed until the time was  
18 delivered. We would get even, you know, advanced  
19 copies on the evening of the State of the Union  
20 address, for example, with the knowledge that it  
21 was embargoed. So it's something that's used daily  
22 in the news media and where the news media -- and

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1 from my experience, where the news media and  
2 government communicate and use documents, it's a  
3 daily -- we use it daily. We use embargoes every  
4 day.

5 BY MS. WILLIAMS:

6 Q. And these embargoes that you said you had  
7 been exposed to when you were a press secretary on  
8 Capitol Hill, did any of them involve lockdowns?

9 A. No. I don't think any of them involved  
10 lockdowns.

11 Q. Can I refer you to what's been marked as  
12 Exhibit 13. I notice at the top of the document it  
13 says "for immediate release." Do you see that?

14 A. I do.

15 Q. In your experience at Treasury, did you ever  
16 have press releases that said for immediate release  
17 that were distributed to the press during an  
18 embargoed period?

19 A. Yes.

20 Q. And what, if any -- why would the press  
21 release say for immediate release even though there  
22 was an embargo in place?

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1 A. Because it was -- we didn't want, when that  
2 document was further distributed, to just to have  
3 -- by the time that document would be further  
4 distributed, it would be for immediate release.

5 Q. And what, if any, effect is the fact that  
6 the document said immediate release had on whether  
7 it could have been distributed to the press during  
8 the embargoed period?

9 MR. THEODOROU: Objection.

10 A. That depends. I mean, you know, my  
11 perspective, my view of it is that -- and I don't  
12 know whether or not this was the document  
13 distributed. But the press officer who is  
14 directing the press conference announces the  
15 policy, you know, when it's -- or does it in  
16 coordination with the press. And when it's  
17 announced, it's announced. And that is -- that's  
18 the rule.

19 BY MS. WILLIAMS:

20 Q. When you say that's the rule, does that mean  
21 that -- I'm trying to figure out the fact that the  
22 document makes it for immediate release and the

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1 press officer makes it as an embargo, which one of  
2 those apply?

3 A. The press officer.

4 Q. Have you ever had any experience where a  
5 reporter released information because he thought  
6 the document was for immediate release even though  
7 there was an embargo in place?

8 MR. THEODOROU: Objection.

9 A. I have no experience with that.

10 BY MS. WILLIAMS:

11 Q. Have you ever posted any documents to the  
12 Treasury Web site?

13 A. Myself?

14 Q. Yes.

15 A. Yes.

16 Q. Could you explain the procedure that you  
17 have to go through in order to post something to  
18 the Web site?

19 A. Sure. It's in its form, it's not a whole  
20 lot different from composing an e-mail, except for  
21 instead of giving an address at the top you give a  
22 in -- what would be sort of the subject line you

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|---|---|
| <p>1 give a title, and then in what looks like a body<br/> 2 for creating an e-mail you can type in original<br/> 3 text or you can cut and paste from another document<br/> 4 like a Word document. You can cut and paste, you<br/> 5 know, text, and cut it, paste it into the body of<br/> 6 what would be -- what you intend to have posted.<br/> 7 And then you have usually a button that you can<br/> 8 click on that would say something like "publish."<br/> 9 You know. And you click that button, and what you<br/> 10 traditionally get is an intermediate step where you<br/> 11 get a chance to look at the document to see what it<br/> 12 looks like were it to be actually live and posted.<br/> 13 So it's not live, but it is translated into the<br/> 14 language they use for Web-based publications, and<br/> 15 it looks like a web page and you have a chance to<br/> 16 review it and see if it looks the way you want it<br/> 17 to look. And if there are any mistakes in it, you<br/> 18 can go back and edit it at that point. And then<br/> 19 there is another button that again would say<br/> 20 "publish" button. And it asks you, are you sure<br/> 21 that you're ready to publish this document? And so<br/> 22 there's usually a yes, no, check box. And if you</p> | <p>1 <b>BY MS. WILLIAMS:</b><br/> 2 Q. When you say that you can make sure a<br/> 3 document looks the way you want it to look, what do<br/> 4 you mean?<br/> 5 <b>MR. THEODOROU:</b> Objection.<br/> 6 <b>A.</b> If you take a document like a document<br/> 7 created on Word or Word Perfect, it goes through a<br/> 8 -- you know, the software on the computer for web<br/> 9 publishing changes the code behind that document,<br/> 10 and it can change the, you know, it could change<br/> 11 the format. Also, when you publish to a web you're<br/> 12 not -- where you might have a document that's three<br/> 13 pages long, when you publish it to the web what you<br/> 14 get instead is one long page that you can scroll<br/> 15 all the way down. So you may have things that may<br/> 16 in your document like page numbers, you might have,<br/> 17 you know, a header and a footer that if you -- you<br/> 18 know, if you just cut and paste the whole document<br/> 19 and put it on the Web site, you would still see<br/> 20 those things like page numbers and headers and<br/> 21 footers that would seem bizarre to you reading it<br/> 22 on the web, you know, as you scroll down a</p> |
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| <p>1 are in fact ready to do that, you click yes, and it<br/> 2 goes to the live server that's available on the<br/> 3 Internet.<br/> 4 Q. Are you familiar with the term staging<br/> 5 server?<br/> 6 <b>A.</b> Yes.<br/> 7 Q. What is the staging server?<br/> 8 <b>MR. THEODOROU:</b> Objection.<br/> 9 <b>A.</b> My understanding is it's that intermediate<br/> 10 step, where the document is held while you're<br/> 11 looking at it; it's been translated into the web<br/> 12 language and it's on the -- it's waiting to be --<br/> 13 it's waiting for you to make that decision to do<br/> 14 actual final publication or not. So you need to --<br/> 15 it's that intermediate step that I talked about.<br/> 16 That's my understanding of it.<br/> 17 <b>BY MS. WILLIAMS:</b><br/> 18 Q. And under your understanding, is information<br/> 19 on the staging server accessible by the public?<br/> 20 <b>A.</b> No.<br/> 21 <b>MR. THEODOROU:</b> Objection.<br/> 22 <b>A.</b> My understanding is that it's not.</p>   | <p>1 document. So you want to -- you know, you want to<br/> 2 be able to remove those things and translate this<br/> 3 document better for web posting. And so it goes<br/> 4 through that process. And it also sometimes<br/> 5 changes things like simple characters, like<br/> 6 quotation marks or, you know, if you have bulleted<br/> 7 texts sometimes it changes the bullets to squares<br/> 8 and all kinds of funky things happen that you need<br/> 9 to just take a look at and be able to fix.<br/> 10 <b>BY MS. WILLIAMS:</b><br/> 11 Q. Do you know if this procedure that you<br/> 12 talked about for posting information to the Web<br/> 13 site, was the same procedure in place on October<br/> 14 31, 2001?<br/> 15 <b>A.</b> Yes.<br/> 16 <b>MR. THEODOROU:</b> Objection.<br/> 17 <b>BY MS. WILLIAMS:</b><br/> 18 Q. Once the information, the press release from<br/> 19 October 31st, 2001 was posted on the Treasury Web<br/> 20 site, was the embargo still in place?<br/> 21 <b>A.</b> No.<br/> 22 Q. What were reporters allowed to do after the</p>   |

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|---|---|
| <p>1 information was published on Treasury's Web site?</p> <p>2 <b>A. Anything they wanted.</b></p> <p>3 Q. I think you mentioned one occasion where you</p> <p>4 learned that an Associated Press reporter or</p> <p>5 organization, Associated Press organization had</p> <p>6 accidentally violated a Treasury embargo. Is that</p> <p>7 right?</p> <p>8 <b>A. That's right.</b></p> <p>9 MR. THEODOROU: Objection.</p> <p>10 BY MS. WILLIAMS:</p> <p>11 Q. Do you know how far in advance of the</p> <p>12 expiration of the embargo that they accidentally</p> <p>13 disclosed embargoed information?</p> <p>14 <b>A. I recall it being a matter of minutes. It</b></p> <p>15 <b>was in the range of, you know, four to six minutes.</b></p> <p>16 Q. On October 31st, 2001, do you know if</p> <p>17 Domestic Finance had any other press events</p> <p>18 scheduled that day after the Treasury refunding</p> <p>19 conference?</p> <p>20 <b>A. Yes.</b></p> <p>21 Q. Can you recall what other events were</p> <p>22 scheduled for Domestic Finance?</p>  | <p>1 MR. THEODOROU: Objection.</p> <p>2 <b>A. I don't remember. It must have been after.</b></p> <p>3 <b>BY MS. WILLIAMS:</b></p> <p>4 Q. Can you refer to Exhibit 16.</p> <p>5 <b>A. Um-hmm.</b></p> <p>6 Q. 16.</p> <p>7 <b>A. Oh, that's 17. I'm sorry. Got it.</b></p> <p>8 Q. Okay. And I'm looking at the first sentence</p> <p>9 of the second paragraph. "The announcement was</p> <p>10 inadvertently posted on the Treasury Web site at</p> <p>11 9:50 a.m."</p> <p>12 <b>A. Yes.</b></p> <p>13 Q. And I think when Mr. Theodorou was asking</p> <p>14 you questions, you stated that you drafted this</p> <p>15 announcement. Is that right?</p> <p>16 <b>A. That's right.</b></p> <p>17 Q. And that you got this approximate 9:50 a.m.</p> <p>18 time from discussions with Ms. Anderson?</p> <p>19 <b>A. Yes.</b></p> <p>20 Q. And so the discussions with Ms. Anderson</p> <p>21 that you had, did those take place after 9:50 a.m.</p> <p>22 regarding her posting the press releases on the Web</p> |
| Page 267  | Page 269  |
| <p>1 <b>A. One thing, I do know there was scheduled is</b></p> <p>2 <b>a background, a background briefing that was to</b></p> <p>3 <b>follow later that sometime after the press</b></p> <p>4 <b>conference. I can't recall whether it was Peter</b></p> <p>5 <b>Fisher or it was one of someone on his staff who</b></p> <p>6 <b>would host it. And that would be for just some</b></p> <p>7 <b>more in-depth background of the decision to</b></p> <p>8 <b>discontinue the clearing.</b></p> <p>9 Q. Who was allowed to attend the background</p> <p>10 briefing that was scheduled that day?</p> <p>11 <b>A. Those are strictly by invitation.</b></p> <p>12 Q. Do you know who was invited for that</p> <p>13 particular briefing?</p> <p>14 <b>A. I don't remember.</b></p> <p>15 Q. Do you know what time that briefing was</p> <p>16 scheduled to begin?</p> <p>17 <b>A. I don't remember.</b></p> <p>18 Q. Do you know if the briefing actually took</p> <p>19 place?</p> <p>20 <b>A. I'm fairly certain it took place. Yeah.</b></p> <p>21 Q. Was it before you learned that the</p> <p>22 information was posted on Treasury Web site?</p> | <p>1 site?</p> <p>2 MR. THEODOROU: Objection.</p> <p>3 <b>A. They had to have. Yeah.</b></p> <p>4 MS. WILLIAMS: I have no further questions.</p> <p>5 MR. THEODOROU: I just have a couple.</p> <p>6 <b>EXAMINATION</b></p> <p>7 <b>BY MR. THEODOROU:</b></p> <p>8 Q. You were asking several questions by</p> <p>9 Ms. Williams just now. Right?</p> <p>10 <b>A. (Nodding head.)</b></p> <p>11 Q. Yesterday, you met with the SEC lawyers for</p> <p>12 three hours?</p> <p>13 <b>A. Yeah. It wasn't more than that.</b></p> <p>14 Q. Did Ms. Williams ask you the same questions</p> <p>15 she just asked you yesterday? The questions she</p> <p>16 just asked you, did she ask you those questions</p> <p>17 yesterday?</p> <p>18 <b>A. No.</b></p> <p>19 Q. So you are saying that all the questions she</p> <p>20 just asked, she did not ask you about any of those</p> <p>21 yesterday?</p> <p>22 <b>A. I'm trying to remember if --</b></p>   |

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|---|--|
| <p>1 Q. It's your memory that controls.</p> <p>2 A. Yeah. I don't think so. I mean, I'm trying</p> <p>3 to think of it if -- if we could read back the</p> <p>4 series of questions. I wasn't thinking that well.</p> <p>5 Q. I didn't expect you. But the topics she</p> <p>6 just went over, she reviewed those topics with you</p> <p>7 yesterday. Didn't she?</p> <p>8 MS. WILLIAMS: Objection.</p> <p>9 A. Boy. There were a lot of things covered.</p> <p>10 Those may have been. Those may have been.</p> <p>11 BY MR. THEODOROU:</p> <p>12 Q. When you sat down and spoke with the SEC</p> <p>13 lawyers yesterday, were you asked whether anybody</p> <p>14 ever raised any questions about embargo at</p> <p>15 quarterly refunding conferences?</p> <p>16 A. No.</p> <p>17 Q. She didn't ask you that?</p> <p>18 A. No.</p> <p>19 Q. Now, she asked you about were there any</p> <p>20 cameras at the October 31st press conference,</p> <p>21 cameras at the press conference?</p> <p>22 A. I honestly don't remember. I don't remember</p> | <p>1 Q. Did Treasury tape the conference?</p> <p>2 A. No.</p> <p>3 Q. Okay. Today, does Treasury tape any part of</p> <p>4 the refunding conference?</p> <p>5 A. I don't know. I mean, it depends.</p> <p>6 Actually, we -- in fact, some of the press</p> <p>7 conferences we web cast, so they are archived and</p> <p>8 web casted. I make a practice of taping everything</p> <p>9 now.</p> <p>10 Q. Does Treasury tape -- at the quarterly</p> <p>11 refunding conferences today, does Treasury tape the</p> <p>12 embargo being announced?</p> <p>13 A. Let me just be clear. I haven't even</p> <p>14 attended a quarterly refunding press conference in</p> <p>15 years.</p> <p>16 Q. Now, you were asked several questions about</p> <p>17 Mr. Fisher's statement by Ms. Williams. Now, you</p> <p>18 testified earlier today that Exhibit 12 is what you</p> <p>19 were -- why don't you take a look at Exhibit 12?</p> <p>20 A. Yes.</p> <p>21 Q. That you worked on, and you added embargoed</p> <p>22 until 10:00 a.m. Correct?</p> |
| Page 271  | Page 273   |
| <p>1 whether there were or weren't.</p> <p>2 Q. Do you remember, was there any videotape</p> <p>3 made?</p> <p>4 A. Not that I'm aware of. I don't remember --</p> <p>5 I just don't remember whether I saw a camera in the</p> <p>6 room or not.</p> <p>7 Q. Do you know if there was any taping at all,</p> <p>8 voice recordings?</p> <p>9 A. Yeah. Definitely.</p> <p>10 Q. There was?</p> <p>11 A. Yeah. Reporters recorded it.</p> <p>12 Q. They recorded the conference?</p> <p>13 A. Absolutely.</p> <p>14 Q. And where is that tape?</p> <p>15 MS. WILLIAMS: Objection.</p> <p>16 A. You would have to ask the reporters in</p> <p>17 attendance.</p> <p>18 BY MR. THEODOROU:</p> <p>19 Q. Reporters tape the conference?</p> <p>20 MS. WILLIAMS: Objection.</p> <p>21 A. Yes.</p> <p>22 BY MR. THEODOROU:</p>   | <p>1 MS. WILLIAMS: Objection.</p> <p>2 A. I'm presuming that I added the embargoed</p> <p>3 time. Yeah.</p> <p>4 BY MR. THEODOROU:</p> <p>5 Q. Somebody added embargoed until 10:00 a.m.?</p> <p>6 A. It was probably me.</p> <p>7 Q. And it was probably you who added embargoed</p> <p>8 until 10:00 a.m. Right?</p> <p>9 MS. WILLIAMS: Objection.</p> <p>10 A. I'm sorry?</p> <p>11 BY MR. THEODOROU:</p> <p>12 Q. It was probably you who added --</p> <p>13 A. Probably. But I don't have a specific</p> <p>14 recollection.</p> <p>15 MS. WILLIAMS: Objection.</p> <p>16 BY MR. THEODOROU:</p> <p>17 Q. You don't have a specific recollection. But</p> <p>18 the bottom line, Mr. Fratto, is that this</p> <p>19 particular document that said embargoed until 10:00</p> <p>20 a.m. -- actually, the document that you worked on,</p> <p>21 that was not the document that was distributed at</p> <p>22 that press conference. Was it?</p>  |

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|--|---|
| <p>1 MS. WILLIAMS: Objection.</p> <p>2 <b>A. I don't know.</b></p> <p>3 <b>BY MR. THEODOROU:</b></p> <p>4 Q. Well, the document that was distributed at</p> <p>5 the press conference was a document that stated</p> <p>6 "for immediate release," Exhibit 15.</p> <p>7 MS. WILLIAMS: Objection.</p> <p>8 <b>BY MR. THEODOROU:</b></p> <p>9 Q. All right. Do you see that?</p> <p>10 <b>A. I see the document.</b></p> <p>11 Q. You did not review the document at the press</p> <p>12 conference that was distributed. Correct?</p> <p>13 MS. WILLIAMS: Objection.</p> <p>14 <b>A. I received a copy of whatever document was</b></p> <p>15 <b>distributed at the press conference, at the press</b></p> <p>16 <b>conference.</b></p> <p>17 <b>BY MR. THEODOROU:</b></p> <p>18 Q. And did you review that document to see</p> <p>19 whether it said immediate release, or embargoed</p> <p>20 until 10:00 a.m.?</p> <p>21 <b>BY MS. WILLIAMS: Objection.</b></p> <p>22 <b>A. I don't think I paid that close attention to</b></p> | <p>1 your Web site. Isn't it from the Treasury Web</p> <p>2 site?</p> <p>3 <b>A. It is.</b></p> <p>4 Q. And it also says for immediate release.</p> <p>5 Doesn't it?</p> <p>6 <b>A. It does.</b></p> <p>7 Q. Okay. And it doesn't say embargoed until</p> <p>8 10:00 a.m. Does it?</p> <p>9 <b>A. No.</b></p> <p>10 Q. All right. So this document, Exhibit 12,</p> <p>11 that you presume that you created, that you added</p> <p>12 embargoed until 10:00 a.m.</p> <p>13 <b>A. Yes.</b></p> <p>14 Q. This document did not go out on the Web</p> <p>15 site. Did it?</p> <p>16 <b>BY MS. WILLIAMS: Objection.</b></p> <p>17 <b>A. I don't know.</b></p> <p>18 <b>BY MR. THEODOROU:</b></p> <p>19 Q. You don't know whether this document ever</p> <p>20 went out on the web side.</p> <p>21 <b>MS. WILLIAMS: Objection.</b></p> <p>22 <b>A. I don't know.</b></p>   |
| Page 275   | Page 277  |
| <p>1 it.</p> <p>2 <b>BY MR. THEODOROU:</b></p> <p>3 Q. And the document that went out on the</p> <p>4 Treasury Web site said for immediate releases.</p> <p>5 Didn't it? And that's Exhibit 13.</p> <p>6 MS. WILLIAMS: Objection.</p> <p>7 <b>A. I believe so. Yeah.</b></p> <p>8 <b>BY MR. THEODOROU:</b></p> <p>9 Q. Take a look at Exhibit 13.</p> <p>10 <b>A. I recall it.</b></p> <p>11 MS. WILLIAMS: Exhibit 13?</p> <p>12 MR. THEODOROU: Exhibit 13. I'm sorry.</p> <p>13 Exhibit 15.</p> <p>14 <b>BY MR. THEODOROU:</b></p> <p>15 Q. Take a look at Exhibit 15.</p> <p>16 <b>A. I see it. But just -- no. But just to be</b></p> <p>17 <b>clear, you're asking me was this, is this</b></p> <p>18 <b>representation -- when did you pull this off the</b></p> <p>19 <b>Web site?</b></p> <p>20 Q. Well, let's take a look.</p> <p>21 <b>A. That's what I don't know.</b></p> <p>22 Q. It's a document for October 31st. It's from</p>  | <p>1 <b>BY MR. THEODOROU:</b></p> <p>2 Q. You don't know what document went out on the</p> <p>3 Web site?</p> <p>4 MS. WILLIAMS: Objection.</p> <p>5 <b>A. No. I don't think anyone knows which</b></p> <p>6 <b>document went out on the Web site that day.</b></p> <p>7 <b>BY MR. THEODOROU:</b></p> <p>8 Q. Are you sure about that?</p> <p>9 MS. WILLIAMS: Objection.</p> <p>10 <b>A. I'm sure you can -- one can find out.</b></p> <p>11 <b>You're asking me if I know? And you're asking me</b></p> <p>12 <b>if this document is the document? Unless it was</b></p> <p>13 <b>printed off, off the Web site that day, I don't</b></p> <p>14 <b>know.</b></p> <p>15 <b>BY MR. THEODOROU:</b></p> <p>16 Q. When --</p> <p>17 <b>A. And neither do you.</b></p> <p>18 Q. Don't be so sure.</p> <p>19 <b>A. Okay.</b></p> <p>20 Q. Assuming that this was the document that</p> <p>21 went out on the Web site, Exhibit 15, which says at</p> <p>22 the bottom, www.treas.gov/press/releases, and then</p> |

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|---|--|
| <p>1 it's dated October 31st, 2001, it is likely that</p> <p>2 that is what went out on the Web site. Isn't it?</p> <p>3 MS. WILLIAMS: Objection.</p> <p>4 A. Let me be perfectly clear in stating that I</p> <p>5 would not stipulate to that. I don't know that for</p> <p>6 certain. There have been numerous instances where</p> <p>7 we find a document on the Web site, we locate an</p> <p>8 error of some sort later that the author of the</p> <p>9 document wants to edit some changes to it. We pull</p> <p>10 that document down and put a new document up that</p> <p>11 would have the same date. Now, I'm not saying that</p> <p>12 it's not. I'm just saying that I don't know.</p> <p>13 BY MR. THEODOROU:</p> <p>14 Q. But this particular document, if you look at</p> <p>15 the bottom.</p> <p>16 A. Yeah.</p> <p>17 Q. Isn't that the Web site location for the</p> <p>18 Treasury?</p> <p>19 A. It is. But what I'm saying is -- and I'm</p> <p>20 not saying this to be tricky. You're just asking</p> <p>21 me to stipulate to something.</p> <p>22 Q. I'm just asking you, what is it at the</p> | <p>1 Q. Again, you did not review the -- you do not</p> <p>2 recall reviewing what was distributed to the press</p> <p>3 at the news conference. Do you?</p> <p>4 MS. WILLIAMS: Objection.</p> <p>5 A. Before it was released?</p> <p>6 BY MR. THEODOROU:</p> <p>7 Q. Yes.</p> <p>8 A. No.</p> <p>9 Q. Oh. One other question. Isn't it a fact</p> <p>10 that today -- I'm sorry, you answered that.</p> <p>11 MR. THEODOROU: I'm done.</p> <p>12 MS. WILLIAMS: I have a couple questions.</p> <p>13 EXAMINATION</p> <p>14 BY MS. WILLIAMS:</p> <p>15 Q. I recall in your direct testimony from Mr.</p> <p>16 Theodorou that you said that someone walked in on</p> <p>17 October 31st, 2001 into the press office with a</p> <p>18 Bloomberg chart. Do you recall that?</p> <p>19 A. I do.</p> <p>20 Q. And that that person said that they noticed</p> <p>21 market movement at 9:30 in the 30-year bond.</p> <p>22 A. They said around 9:30.</p>  |
| Page 279  | Page 281   |
| <p>1 bottom of that document?</p> <p>2 A. That's the Treasury Web site.</p> <p>3 Q. It says the Treasury Web site.</p> <p>4 A. Yeah.</p> <p>5 Q. And does that document say for immediate</p> <p>6 release?</p> <p>7 A. It does.</p> <p>8 Q. Okay. That's what I'm asking.</p> <p>9 A. Okay.</p> <p>10 Q. Now, this particular other document has the</p> <p>11 Treasury Building on it, Exhibit 12 that I asked</p> <p>12 you about earlier today.</p> <p>13 A. Yeah.</p> <p>14 Q. What does that say in the right-hand? It</p> <p>15 says embargoed until 10 a.m. Correct?</p> <p>16 A. Correct.</p> <p>17 Q. And then this particular document, Exhibit</p> <p>18 13 that says Treasury News, do you see that</p> <p>19 document?</p> <p>20 A. Yes.</p> <p>21 Q. What does they say in the right-hand?</p> <p>22 A. It says for immediate release.</p>   | <p>1 Q. Do you know what caused the market to move</p> <p>2 at 9:30?</p> <p>3 A. I didn't --</p> <p>4 MR. THEODOROU: Objection.</p> <p>5 A. I didn't at the time, and would only</p> <p>6 subsequently -- I'm not an expert on what could</p> <p>7 make a market move. It seems to me that some of</p> <p>8 the leaking that went on from Peter Davis and</p> <p>9 whoever else contributed to that.</p> <p>10 BY MS. WILLIAMS:</p> <p>11 Q. Do you have, do you know if rumors ever</p> <p>12 cause the market to move?</p> <p>13 MR. THEODOROU: Objection.</p> <p>14 A. Rumors frequently cause the market to move.</p> <p>15 BY MS. WILLIAMS:</p> <p>16 Q. When you say they frequently cause the</p> <p>17 market to move, on what do you base that statement?</p> <p>18 A. Just my experience watching the markets.</p> <p>19 And, you know, again, I'm not an expert on markets;</p> <p>20 you can bring in traders and get -- you know, get</p> <p>21 their views on it. But I have seen rumors out</p> <p>22 there that, you know, people who are experts in the</p> |

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1 markets attribute to — attribute market movements  
2 to those rumors.

3 Q. Have you ever heard the statement buy on the  
4 rumors, sell on the fact?

5 MR. THEODOROU: Objection.

6 A. Yes. All the time.

7 MS. WILLIAMS: I have no further questions.

8 MR. THEODOROU: Thank you, Mr. Fratto.

9 THE VIDEOGRAPHER: This concludes the  
10 deposition of Tony Fratto, consisting of four  
11 videotapes. We are off the record at 4:55:03.  
12 (WHEREUPON, the deposition was concluded.)

13

14

15 \_\_\_\_\_  
Signature of the Witness

16

17 SUBSCRIBED AND SWORN to before me this \_\_\_\_\_

18

19 day of \_\_\_\_\_, 20\_\_.

20

21 \_\_\_\_\_  
NOTARY PUBLIC

22 My Commission expires: \_\_\_\_\_

From the Office of Public Affairs

Treasury Department Sets Procedures for Quarterly Refunding Announcements

The Treasury Department Office of Public Affairs is modifying its procedure for disseminating the announcement of the government's quarterly refunding needs. The changes are intended to improve the timeliness and transparency of quarterly refunding announcements.

Starting with the next scheduled refunding announcement on January 30, 2002, Treasury's Office of Public Affairs will post the announcement on the Treasury web site ([www.Treas.gov](http://www.Treas.gov)) at 9:00AM (EST). The announcement also will be delivered to credentialed members of the media in the Treasury Pressroom shortly before 9:00AM with lock-down embargo rules. The announcements include release of the Treasury Department's borrowing estimates for the following quarter and the policy statement.

The traditional practice of releasing the quarterly refunding announcement at a news conference will be discontinued. A senior Treasury official will brief members of the media subsequent to the announcement at a regularly scheduled time.

The Office of Public Affairs will disseminate Treasury information in the most timely and transparent manner possible while also maintaining confidentiality prior its proper release.



## **Exhibit G**

### **Deposition of Peter Davis and Cited Exhibits (April 19-20, 2006)**

Peter Davis, Jr.

Washington, DC

April 19, 2006

Page 1

1 UNITED STATES DISTRICT COURT  
2 FOR THE DISTRICT OF MASSACHUSETTS  
3 - - - - - X  
4 UNITED STATES SECURITIES AND :  
5 EXCHANGE COMMISSION, :  
6 Plaintiff, :  
7 V. : Civil Action No.  
8 STEVEN E. NOTHERN, : 05-10983(NMG)  
9 Defendant. :  
10 - - - - - X  
11 Washington, D.C.  
12 Wednesday, April 19, 2006  
13 Videotape Deposition of PETER DAVIS, JR.,  
14 a witness herein, called for examination by counsel  
15 for the Plaintiff in the above-entitled matter,  
16 pursuant to notice and subpoena, the witness being  
17 duly sworn by PENNY M. DEAN, a Notary Public in and  
18 for the District of Columbia, taken at the offices of  
19 U.S. Securities and Exchange Commission, 100 F  
20 Street, NE, Washington, D.C., at 9:37 a.m.,  
21 Wednesday, April 19, 2006, and the proceedings being  
22 taken down by Stenotype by PENNY M. DEAN, RPR, and  
23 transcribed under her direction.  
24  
25

Peter Davis, Jr.

April 19, 2006

Washington, DC

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|---|--|
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| 2   | 2 WITNESS EXAMINATION BY COUNSEL FOR             |
| 3 On behalf of the Plaintiff:             | 3 PETER DAVIS, JR. PLAINTIFF                     |
| 4 ERICA Y. WILLIAMS ESQ.                  | 4 By Ms. Williams 8                              |
| 5 JOHN J. ROSSETTI, JR., ESQ.             | 5  |
| 6 U.S. Securities and Exchange Commission | 6 Afternoon Session - Page 101                   |
| 7 100 F Street, NE                        | 7  |
| 8 Washington, D.C. 20549-4010             | 8 EXHIBITS                                       |
| 9 (202) 551-4450                          | 9 DAVIS EXHIBIT NO. PAGE NO.                     |
| 10 (202) 551-4819                         | 10 1 Notice of deposition 15                     |
| 11  | 11 2 Subpoena 15                                 |
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| 14 ROBERT E. TOONE, ESQ.                  | 14 5 Electronic brochure 35                      |
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| 17 155 Seaport Boulevard                  | 17 8 Call list 46                                |
| 18 Boston, MA 02210-2600                  | 18 9 Printout of contact manager data file 53    |
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| 5 Baker Botts LLP                         | 5 17 Plea hearing transcript 142                 |
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| 8 Washington, D.C. 20004-2400             | 8 19 Consent entered into with SEC 147           |
| 9 (202) 639-7894                          | 9 20 Subpoena 147                                |
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| 15  | 15 24 Fax cover page dated 160                   |
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| 17  | 17 25 Report of faxes dated 162                  |
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|--|--|
| <p>1 EXHIBITS</p> <p>2 DAVIS EXHIBIT NO. PAGE NO.</p> <p>3 30 Memo from Davis dated 188</p> <p>4 November 5th, 2001</p> <p>5 31 E-mail from Davis 229</p> <p>6 32 Sprint phone bill for billing period 231</p> <p>7 ending August 26th, 2001</p> <p>8 33 Sprint phone bill for billing period 232</p> <p>9 ending September 26th, 2001</p> <p>10 34 Excerpt from October Sprint phone bill 234</p> <p>11 35 Broadcast fax delivery report 235</p> <p>12 36 Notes from Davis dated August 1, 2001 240</p> <p>13 37 Verizon phone bill dated 241</p> <p>14 August 19th, 2001</p> <p>15</p> <p>16</p> <p>17</p> <p>18</p> <p>19</p> <p>20</p> <p>21</p> <p>22</p> <p>23</p> <p>24</p> <p>25</p>   | <p>1 MR. THEODOROU: Nicholas Theodorou for --</p> <p>2 from Foley Hoag representing Mr. Steven Nothern.</p> <p>3 MR. TOONE: Robert Toone from Foley Hoag</p> <p>4 representing Steven Nothern.</p> <p>5 THE VIDEOGRAPHER: Will the court reporter</p> <p>6 please swear in the witness?</p> <p>7 Whereupon,</p> <p>8 PETER DAVIS, JR.,</p> <p>9 residing at 3015 Tennyson Street, Northwest,</p> <p>10 Washington, D.C., was called as a witness by counsel</p> <p>11 for Plaintiff, and having been duly sworn by the</p> <p>12 Notary Public, was examined and testified as follows:</p> <p>13 EXAMINATION BY COUNSEL FOR PLAINTIFF</p> <p>14 BY MS. WILLIAMS:</p> <p>15 Q. Good morning, Mr. Davis.</p> <p>16 A. Good morning.</p> <p>17 Q. Could you please state --</p> <p>18 MR. THEODOROU: Before we start, can we</p> <p>19 put the stipulation on the record?</p> <p>20 MS. WILLIAMS: Absolutely. The parties</p> <p>21 have stipulated that all objections including hearsay</p> <p>22 will be reserved and that question -- except for</p> <p>23 questions -- objections as to the form of the</p> <p>24 question.</p> <p>25 MR. THEODOROU: So that what we stipulate</p> |
| Page 7   | Page 9   |
| <p>1 PROCEEDINGS</p> <p>2 THE VIDEOGRAPHER: This is tape number 1</p> <p>3 in the videotape deposition of Mr. Peter Davis, Jr.</p> <p>4 in the matter of United States Securities and</p> <p>5 Exchange Commission versus Steven E. Nothern in the</p> <p>6 United States District Court for the District of</p> <p>7 Massachusetts, Boston Division, Civil Action Number</p> <p>8 05-10983 NMG.</p> <p>9 The deposition is being held at the</p> <p>10 Securities and Exchange Commission, 100 F Street,</p> <p>11 Northeast, Washington, D.C., 20549, and we're on the</p> <p>12 record at 9:37 a.m. on Wednesday, April 19th, 2006.</p> <p>13 My name is Dustin Lavalley in association with</p> <p>14 Alderson Reporting at 1111 14th Street, suite 400,</p> <p>15 Washington D.C., 20005. And I'm the legal video</p> <p>16 specialist. The court reporter is Penny Dean, also</p> <p>17 in association with Alderson Reporting.</p> <p>18 For the record, will counsel please</p> <p>19 introduce themselves.</p> <p>20 MR. STANCIL: Mark Stancil for Peter J.</p> <p>21 Davis.</p> <p>22 MS. WILLIAMS: Erica Williams for the</p> <p>23 Securities and Exchange Commission.</p> <p>24 MR. ROSSETTI: John Rossetti for the</p> <p>25 Securities and Exchange Commission.</p> | <p>1 is all objections except as to the matter of form,</p> <p>2 including objections to hearsay, have been reserved</p> <p>3 until the time of trial.</p> <p>4 MS. WILLIAMS: And also any motion to</p> <p>5 strike has been reserved until the time of trial.</p> <p>6 MR. THEODOROU: Correct, including motions</p> <p>7 to strike.</p> <p>8 BY MS. WILLIAMS:</p> <p>9 Q. Mr. Davis, could you please state your</p> <p>10 full name and spell your last name for the court</p> <p>11 reporter?</p> <p>12 A. It's Peter Joseph Davis, Jr., and it's</p> <p>13 D-a-v-i-s.</p> <p>14 Q. What's your date of birth, Mr. Davis?</p> <p>15 A. May 12th, 1950.</p> <p>16 Q. And your Social Security number?</p> <p>17 A. 212-58-6906.</p> <p>18 Q. What's your home addresses?</p> <p>19 A. 3015 Tennyson Street, Northwest, that's</p> <p>20 T-e-n-n-y-s-o-n, D.C.</p> <p>21 Q. What is your home phone number?</p> <p>22 A. It's (202) 966-3386.</p> <p>23 Q. Do you have a cellular telephone?</p> <p>24 A. Yes.</p> <p>25 Q. What is your cell phone number?</p>   |

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|--|--|
| <p>1 A. (202) 365-7624.</p> <p>2 Q. Do you have a fax?</p> <p>3 A. Well, I take faxes over my home phone.</p> <p>4 Q. Do you have an E-mail address?</p> <p>5 A. Yes.</p> <p>6 Q. What is your E-mail address?</p> <p>7 A. It is Pete, p-e-t-e @daviscap.com, it's</p> <p>8 daviscap.com.</p> <p>9 Q. Do you have any phone numbers that you</p> <p>10 haven't already told us about?</p> <p>11 A. No.</p> <p>12 Q. Do you have any web addresses other than</p> <p>13 an E-mail, do you have a website?</p> <p>14 A. No.</p> <p>15 Q. Have you ever been deposed before?</p> <p>16 A. I was deposed here, wasn't I? Back four</p> <p>17 years ago.</p> <p>18 Q. Are you referring to the testimony that</p> <p>19 you gave in the SEC's investigation?</p> <p>20 A. Yeah.</p> <p>21 Q. And except for that testimony, have you</p> <p>22 ever been deposed before?</p> <p>23 A. No.</p> <p>24 Q. Have you ever testified at trial?</p> <p>25 A. No.</p>   | <p>1 Q. Did you meet with any attorneys for the</p> <p>2 SEC prior to this deposition?</p> <p>3 A. No.</p> <p>4 Q. Did you meet with -- have you ever met</p> <p>5 with any attorneys from the U.S. Attorney's office?</p> <p>6 A. I'm trying to remember.</p> <p>7 MR. STANCIL: I think he may have misheard</p> <p>8 you.</p> <p>9 MS. WILLIAMS: Okay.</p> <p>10 BY MS. WILLIAMS:</p> <p>11 Q. Have you ever met with any attorneys from</p> <p>12 the United States Attorney's Office, specifically in</p> <p>13 connection with their investigation into trading in</p> <p>14 the 30-year bond?</p> <p>15 A. I mean, I don't recall all the attorneys</p> <p>16 that were there at the SEC four years ago.</p> <p>17 Q. Was there a meeting, though, between you</p> <p>18 and some attorneys four years ago regarding an</p> <p>19 investigation into the 30-year bond?</p> <p>20 MR. STANCIL: I don't want to mess -- I</p> <p>21 don't want to dissuade you from where you're going, I</p> <p>22 think she's talking about the criminal authorities in</p> <p>23 New York. Rod Hoates, Brian Coad.</p> <p>24 THE WITNESS: Oh, yeah. Oh, up in New</p> <p>25 York, sure, yes.</p>  |
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| <p>1 Q. Do you have any medical conditions that</p> <p>2 might affect your memory or your ability to testify</p> <p>3 truthfully today?</p> <p>4 A. No.</p> <p>5 Q. Are you represented by counsel?</p> <p>6 A. Yes.</p> <p>7 Q. Who is your counsel?</p> <p>8 A. Mark Stancil, Baker Botts.</p> <p>9 Q. Did you meet with Mr. Stancil prior to</p> <p>10 this deposition?</p> <p>11 A. We had a telephone conversation yesterday.</p> <p>12 Q. How long was your telephone conversation?</p> <p>13 MR. STANCIL: Objection, privilege, how</p> <p>14 long we talked, don't answer that.</p> <p>15 BY MS. WILLIAMS:</p> <p>16 Q. Was anyone else present or anyone else on</p> <p>17 the phone besides you and Mr. Stancil?</p> <p>18 MR. STANCIL: Objection. Don't answer</p> <p>19 that.</p> <p>20 MS. WILLIAMS: If anyone was on the phone</p> <p>21 besides you, it might break the privilege.</p> <p>22 MR. STANCIL: I can stipulate that no one</p> <p>23 else was on the telephone conversation.</p> <p>24 MS. WILLIAMS: Thank you.</p> <p>25 BY MS. WILLIAMS:</p> | <p>1 MR. STANCIL: I don't think Mr. Davis --</p> <p>2 he wasn't always sure who at the table was from which</p> <p>3 office.</p> <p>4 THE WITNESS: Yeah, I mean, there were</p> <p>5 lots of people at various times who interrogated me</p> <p>6 including Mr. Hoates up in New York.</p> <p>7 BY MS. WILLIAMS:</p> <p>8 Q. Do you know if any attorneys from the SEC</p> <p>9 were present during that what you call an</p> <p>10 interrogation?</p> <p>11 A. There was an interrogation here at the</p> <p>12 SEC. And then at a subsequent date, I went up to New</p> <p>13 York and I was integrated up in New York.</p> <p>14 Q. So you don't know whether -- who was</p> <p>15 present at that particular interrogation, except for</p> <p>16 the individuals you just named, Mr. Coad and Mr. --</p> <p>17 A. Mr. Coad and the other guy up in New York.</p> <p>18 And then there were a number of attorneys from the</p> <p>19 SEC, including Mr. Rossetti here four years ago, so</p> <p>20 those were two different occasions.</p> <p>21 Q. Mr. Rossetti was present during that</p> <p>22 interrogation?</p> <p>23 A. I think so. I mean, that was a long time</p> <p>24 ago.</p> <p>25 Q. When you say analogy interrogation, can</p> |

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| <p>1 you describe to me what went on during that meeting?</p> <p>2 A. Which one, the SEC or --</p> <p>3 Q. The one in New York?</p> <p>4 A. The one in New York? They basically asked</p> <p>5 me about the events leading up to and the events of</p> <p>6 October 31st, 2001. I disclosed information about</p> <p>7 the 30-year bond.</p> <p>8 Q. Do you know if that meeting was on the</p> <p>9 record, was it transcribed by a court reporter?</p> <p>10 A. Whew --</p> <p>11 MR. STANCIL: Do you know?</p> <p>12 THE WITNESS: I don't recall.</p> <p>13 BY MS. WILLIAMS:</p> <p>14 Q. Before you go any further, I'm going to</p> <p>15 describe the deposition process to you. Your</p> <p>16 testimony is being taken under oath and it is being</p> <p>17 transcribed by the court reporter --</p> <p>18 A. Sure.</p> <p>19 Q. -- and it is taken under penalty of</p> <p>20 perjury.</p> <p>21 A. I understand.</p> <p>22 Q. Please give oral, audible responses so the</p> <p>23 court reporter can transcribe them. Please don't</p> <p>24 talk while I'm talking, and I will try to extend to</p> <p>25 you the same courtesy, because then we will have a</p> | <p>1 A. Yes.</p> <p>2 Q. And the subpoena was also sent. Are you</p> <p>3 appearing pursuant to the subpoena that was sent for</p> <p>4 your deposition?</p> <p>5 A. I guess, yes.</p> <p>6 MR. THEODOROU: So which -- excuse me,</p> <p>7 counsel, which is Exhibit 1?</p> <p>8 MS. WILLIAMS: Exhibit 1 is the notice of</p> <p>9 deposition and Exhibit 2 is the subpoena.</p> <p>10 I'd like to have this marked as Exhibit 3.</p> <p>11 (Davis Exhibit No. 3 was marked for</p> <p>12 identification.)</p> <p>13 BY MS. WILLIAMS:</p> <p>14 Q. Do you recognize this document, sir?</p> <p>15 A. This is the first time I've seen it.</p> <p>16 Q. Were you aware that a subpoena was sent in</p> <p>17 this case, SEC versus Mr. Nothorn, for documents</p> <p>18 that -- for documents from you, that a subpoena was</p> <p>19 sent requesting that you produce documents?</p> <p>20 A. I recall my attorney calling me or you</p> <p>21 know, calling me a few months ago and discussing</p> <p>22 that, but I never saw the subpoena, I have no idea</p> <p>23 which documents, but --</p> <p>24 Q. Do you know if you did produce documents?</p> <p>25 A. You know, my attorneys had all my</p>  |
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| <p>1 clean record. If you need to take a break, let me</p> <p>2 know and we will take a break unless a question is</p> <p>3 pending.</p> <p>4 Do you have any questions about the</p> <p>5 deposition processes?</p> <p>6 A. No.</p> <p>7 Q. I want to go back to the meeting in New</p> <p>8 York, was your counsel present during that meeting?</p> <p>9 A. Yes.</p> <p>10 Q. And who was present? Mr. Stancil?</p> <p>11 A. And Mary Spearing from Baker Botts.</p> <p>12 MS. WILLIAMS: I'd like to have these</p> <p>13 marked as Exhibits 1 and 2.</p> <p>14 (Davis Exhibit Nos. 1 &amp; 2 were</p> <p>15 marked for identification.)</p> <p>16 BY MS. WILLIAMS:</p> <p>17 Q. Do you recognize these documents?</p> <p>18 A. It's the first time I've seen them.</p> <p>19 Q. And were you aware that a notice was sent</p> <p>20 for your deposition today?</p> <p>21 A. My counsel called me or E-mailed me a few</p> <p>22 months ago, and said that I was going to be deposed</p> <p>23 today.</p> <p>24 Q. Are you appearing today pursuant to that</p> <p>25 notice of deposition?</p>  | <p>1 documents for like since four and a half years ago,</p> <p>2 so I don't -- I don't recall what documents, if any,</p> <p>3 were conveyed.</p> <p>4 Q. Can you please provide your educational</p> <p>5 history since high school?</p> <p>6 A. Since high school, yeah. I have a BA in</p> <p>7 economics from the University of Rochester in 1972.</p> <p>8 And I took nine courses towards a master's degree in</p> <p>9 economics at American University, but I never</p> <p>10 completed that degree.</p> <p>11 Q. After you come -- after you finished</p> <p>12 college, what jobs did you hold?</p> <p>13 A. My first job was -- as a research</p> <p>14 assistant at the Center for Naval Analysis in</p> <p>15 Rosslyn, Virginia. And that I started in August of</p> <p>16 '72. And in March of '74, I was hired by the Joint</p> <p>17 Committee on Taxation, U.S. Congress.</p> <p>18 February 1 of '81, I was hired by the</p> <p>19 Senate Budget Committee. October of '83, I was hired</p> <p>20 by Prudential Bache Securities in their Washington</p> <p>21 research office in Rosslyn, Virginia. I forget, some</p> <p>22 time early in 1990, February maybe or March, I was</p> <p>23 hired by Ernst &amp; Young in their national tax office.</p> <p>24 In February of 1992, I was hired by the</p> <p>25 president pro tempore of the Senate, Robert C. Byrd.</p> |

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| <p>1 And I worked for him until some time in October '92,<br/>2 at which point I established my own business which I<br/>3 called Davis Capital Investment Ideas where I've<br/>4 worked ever since as a sole proprietor.<br/>5 Q. I want to go back to some of the jobs that<br/>6 you mentioned. When you worked for Prudential Bache<br/>7 Securities, what was your job title?<br/>8 A. Vice president.<br/>9 Q. And what were your job responsibilities as<br/>10 vice president?<br/>11 A. To follow Washington policy developments<br/>12 that might affect investors, clients of the firm, to<br/>13 write a weekly article for the Strategy Weekly, which<br/>14 was sort of the main publication of the research<br/>15 department, to travel throughout the U.S. and Western<br/>16 Europe visiting clients, and you know, giving<br/>17 speeches and basically talking about what's going to<br/>18 happen mostly to tax policy and to the deficit, what<br/>19 fiscal policy changes were occurring in Washington.<br/>20 Q. And you left Prudential Bache Securities<br/>21 to join Ernst &amp; Young?<br/>22 A. Yes.<br/>23 Q. Why did you leave Prudential to join Ernst<br/>24 &amp; Young?<br/>25 A. I discovered that there was some things I</p>    | <p>1 A. I think it was -- it was senior manager.<br/>2 Q. And what were your responsibilities there?<br/>3 A. They were similar, I was to follow tax<br/>4 policy and economic policy, and to advise clients on<br/>5 what sort of policy developments they should expect<br/>6 from Washington.<br/>7 Q. And then you said you went to work for<br/>8 Senator Byrd?<br/>9 A. Yes.<br/>10 Q. What was your job title when you worked<br/>11 for Senator Byrd?<br/>12 A. I'm trying to remember.<br/>13 MR. STANCIL: If you remember.<br/>14 THE WITNESS: I should remember. What the<br/>15 heck was it? Um, I don't recall.<br/>16 BY MS. WILLIAMS:<br/>17 Q. Why did you leave Ernst &amp; Young to go work<br/>18 for Senator Byrd?<br/>19 A. I liked the people, but I didn't like the<br/>20 culture. Accounting firms were -- I mean, I had a<br/>21 lot of friends at accounting firms, that's why I got<br/>22 hired, but I just didn't like the culture. And so<br/>23 when I got an opportunity, I went back there.<br/>24 Q. Can you describe your job responsibilities<br/>25 when you worked for Senator Byrd?</p>   |
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| <p>1 didn't like in the firm, and so I just left.<br/>2 Q. What kind of things?<br/>3 A. The CEO, George Ball, was -- allegedly had<br/>4 been doing some questionable activities regarding the<br/>5 finances of the firm.<br/>6 Q. How did you find out about these alleged<br/>7 questionable activities?<br/>8 A. I think it was in the papers. I didn't<br/>9 find it internally.<br/>10 Q. Do you know what -- what do you mean by<br/>11 alleged questionable activities?<br/>12 A. My recollection is that he was -- well,<br/>13 there were two areas. One was questionable tax<br/>14 shelters, which I had no involvement in, but I was<br/>15 kind of surprised the firm was still selling them as<br/>16 I was publishing articles on a regular basis pointing<br/>17 out how the '86 Tax Reform Act was sharply curtailing<br/>18 tax shelters.<br/>19 The second area was, as I recall, he was<br/>20 brought before the SEC on -- or some other regulatory<br/>21 body possibly on issues about the float in finances<br/>22 with local branches and the interest, you know,<br/>23 whether there was, you know, improper management of<br/>24 the float, you know, cash float of the firm.<br/>25 Q. What was your job title at Ernst &amp; Young?</p> | <p>1 A. Yes, he was chair of the Senate<br/>2 Appropriations Committee, he was very concerned that<br/>3 the potential tax cuts might take funding away from<br/>4 discretionary spending and -- which he's well-known<br/>5 for caring a lot about discretionary spending. So I<br/>6 was there to supply arguments and speeches, testimony<br/>7 to counter tax cuts.<br/>8 Q. You said that you left in October of '92<br/>9 to start Davis Capital?<br/>10 A. Right.<br/>11 Q. Approximately how long did you work for<br/>12 Senator Byrd?<br/>13 A. I worked for him for ten months, and I<br/>14 forgot to mention, I was hired specifically on a<br/>15 temporary basis, you know, I took the job knowing<br/>16 that it would be at least six months and probably not<br/>17 a year and --<br/>18 Q. When you left, was your temporary job up<br/>19 or had it ended?<br/>20 A. Yeah, well, you know, we got to the end of<br/>21 the year, Congress was winding down and it was Jim<br/>22 English, the staff director said, well, time's up. I<br/>23 said, fine, thanks, and went out and started<br/>24 establishing my business.<br/>25 Q. Is it okay if I refer to Davis Capital</p> |

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| <p>1 Investment Ideas as Davis Capital during the<br/>2 deposition?</p> <p>3 A. Yeah, of course, that's how I refer to it,<br/>4 too.</p> <p>5 Q. Why did you decide to start Davis Capital?</p> <p>6 A. A friend of mine who had worked at CBO,<br/>7 Congressional Budget Office, and later had gone on to<br/>8 run the bond desk at Shearson and then set up his own<br/>9 hedge fund was in the habit of calling me every, I<br/>10 don't know, four or five months to get my views on<br/>11 what the deficit outlook was.</p> <p>12 And so while I was working for Senator<br/>13 Byrd some time that summer of '92, he called me and<br/>14 asked me, you know, what I thought about the deficit<br/>15 and we got into quite an extended conversation. And<br/>16 at the end of the conversation, he said to me, gee, I<br/>17 can't get this information anywhere else. And you<br/>18 know, it's public information, but it's the judgment<br/>19 of how to use the various sources of data, like what<br/>20 potential tax cuts might look like and what potential<br/>21 spending plans might look like.</p> <p>22 And then I would come up with my own views<br/>23 on those policies, and then come up with my own<br/>24 estimate of what the deficit was going to be. So at<br/>25 the end of the conversation, he asked me if I was</p> | <p>1 MS. WILLIAMS: That's fine.</p> <p>2 THE WITNESS: If it remains confidential,<br/>3 fine.</p> <p>4 MR. STANCIL: It's not confidential until<br/>5 we agree on how it would be. So for now, if we can<br/>6 just set that aside, I'm sure we can work something<br/>7 out.</p> <p>8 BY MS. WILLIAMS:</p> <p>9 Q. Could you tell me how many clients you<br/>10 have right now?</p> <p>11 A. Well, there's -- there's six and one that<br/>12 gives me an occasional project, so seven maybe.</p> <p>13 Q. You said that you send out occasional<br/>14 E-mails, how often do you send out E-mails?</p> <p>15 A. It's based on whether I have something<br/>16 that I think is worse saying. So I mean, one of the<br/>17 problems with Wall Street research is it comes out on<br/>18 a regular basis and it just stacks up on managers'<br/>19 desks. So I purposely put mine out on an irregular<br/>20 basis. And when Congress is in town, I'll probably<br/>21 put something out every day, usually in the morning,<br/>22 but sometimes in the afternoon. Congress is out of<br/>23 town this week, I put something out Monday morning<br/>24 and I haven't put out anything since.</p> <p>25 Q. When Congress is out of town,</p>  |
| Page 23   | Page 25  |
| <p>1 thinking -- if I would think about going out and<br/>2 forming my own business. And so it was at his<br/>3 instigation that I did go out and form my own<br/>4 business.</p> <p>5 Q. Does Davis Capital still exist?</p> <p>6 A. Sure. I work out of my home now, but I<br/>7 have some paying clients left, and I send out an<br/>8 E-mail occasionally describing Washington policy,<br/>9 mostly fiscal policy developments that I think might<br/>10 affect the market.</p> <p>11 Q. Could you tell me who your clients are?</p> <p>12 A. I have contractual arrangements with some<br/>13 of them not to disclose that.</p> <p>14 Q. Okay. And the others you don't have<br/>15 contractual arrangements?</p> <p>16 A. Some of these are just handshakes. I only<br/>17 have contracts with one or two clients and it's<br/>18 probably not a good idea to be disclosing clients. I<br/>19 mean -- I don't know whether this becomes public<br/>20 record.</p> <p>21 MR. STANCIL: This will be public record<br/>22 so if you have an agreement with a client not to<br/>23 disclose it, we'd ask you to -- I don't think it will<br/>24 be a big deal, but we would ask for some arrangement<br/>25 to be made for it to be confidential.</p>  | <p>1 approximately how many do you send out per month?</p> <p>2 A. Like I said, it's usually daily, so if<br/>3 there's 20 days or 21 days in the month it might be<br/>4 that many. Sometimes there's two in a day. It<br/>5 depends on what's happening. I mean, if something<br/>6 really important happens and I think the market is<br/>7 misinterpreting it, I'll put out an E-mail instantly.</p> <p>8 Q. Besides E-mails, what other services do<br/>9 you offer the clients?</p> <p>10 A. Well, now, basically available to talk to<br/>11 them, to talk on conference calls to their clients,<br/>12 to answer their questions, to do custom research on<br/>13 the side. I mean, my standard maintenance product is<br/>14 the E-mail, and but, you know, I -- especially for my<br/>15 very good clients, I'm doing other research and<br/>16 following issues on an ongoing basis and alerting<br/>17 them.</p> <p>18 There are some issues that are so esoteric<br/>19 that they are not of general interest to all my<br/>20 clients. So like this morning, I found out that, you<br/>21 know, from the Bureau of National Affairs Daily<br/>22 Report For Executives that U.S. may enter into<br/>23 renewed trade negotiations on Canadian soft wood<br/>24 lumber. I mean, there's only one client who cares<br/>25 about that, I sent him an E-mail saying, hey, here's</p> |

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| <p>1 the article.</p> <p>2 Q. Where do you get the information that you</p> <p>3 include in your E-mails to your clients?</p> <p>4 A. I subscribe to a wide range of information</p> <p>5 services, I already mentioned the BNA Daily</p> <p>6 Executive, Daily Report For Executives. The National</p> <p>7 Journal has a real good service in the morning and in</p> <p>8 the afternoon, the White House bulletin, their a.m.</p> <p>9 service and the Congressional Quarterly puts out a</p> <p>10 good weekly and has a lot of good research material</p> <p>11 on line. Those are the basic ones.</p> <p>12 And then I also am in conversation and</p> <p>13 E-mail contact with friends of mine on the Hill and</p> <p>14 in the Administration. And I call them up and ask</p> <p>15 them questions, you know. I then formulate my views</p> <p>16 on like is the tax bill going to, you know, tax bill</p> <p>17 conference going to conclude this week and I write</p> <p>18 about it. I don't quote people, but I -- usually I</p> <p>19 don't quote people. And I just put out my view on</p> <p>20 what's going to happen in the future.</p> <p>21 Q. Are any of the friends that you call at</p> <p>22 the Treasury Department?</p> <p>23 A. Sure.</p> <p>24 Q. Can you tell me who those people are?</p> <p>25 A. I know tons of people at Treasury</p>                          | <p>1 A. I don't know, do I have to name people? I</p> <p>2 can spend all day naming people.</p> <p>3 MR. STANCIL: One of our concerns is this</p> <p>4 is his business. And if he has competitors and if</p> <p>5 it's going to be public record who his contacts are</p> <p>6 at Treasury -- I think he would be happy to give them</p> <p>7 to you if we could put this under seal or under a</p> <p>8 confidentiality agreement. But for his purposes,</p> <p>9 this is his livelihood.</p> <p>10 MS. WILLIAMS: I'm just asking him to</p> <p>11 name -- he said he calls friends. And I'm just</p> <p>12 asking him the names of the friends at Treasury that</p> <p>13 he currently calls. So I don't think that that is</p> <p>14 really -- that's not confidential information, the</p> <p>15 friends the Treasury that Mr. Davis has that he</p> <p>16 calls, I don't see how that even comes --</p> <p>17 THE WITNESS: I've lost two-thirds of my</p> <p>18 clients already.</p> <p>19 MS. WILLIAMS: I understand.</p> <p>20 MR. STANCIL: For his business, this is</p> <p>21 basically his trade secret who his people are. And I</p> <p>22 understand that's relevant to your investigation, and</p> <p>23 he's not trying to make it difficult, but he is</p> <p>24 understandably sensitive to the idea that, you know,</p> <p>25 it would be a matter of public record who he knows at</p> |
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| <p>1 Department. I don't talk to anybody in public debt</p> <p>2 in the last -- you know, since October 31st, 2001,</p> <p>3 but I have lots of economist friends who are working</p> <p>4 on tax policy and, you know, usually it's issues</p> <p>5 around they've published a revenue estimate on a tax</p> <p>6 bill or something, and I call them up, and since I</p> <p>7 used to be a revenue estimator, I can ask them, well,</p> <p>8 gee, you know, why does it look like this?</p> <p>9 I run -- I'm the cofounder of a</p> <p>10 professional group that meets every couple of weeks</p> <p>11 on all the tax economists in town, a number of tax</p> <p>12 economists at Treasury attend those meetings so, you</p> <p>13 know. And I, you know, I also know some people in</p> <p>14 economic policy, so they'll come out with a report</p> <p>15 saying that, you know, say something about the</p> <p>16 economy or something like that.</p> <p>17 Q. When you pick up the phone to call a</p> <p>18 friend at Treasury, though, I'm trying to find out</p> <p>19 the names of the different people you would call, if</p> <p>20 you could just tell me some of the friends that you</p> <p>21 typically call there?</p> <p>22 A. So you're going to call up all my friends</p> <p>23 at Treasury?</p> <p>24 Q. No, I'm not, I'm just trying to find</p> <p>25 information.</p> | <p>1 Treasury, and doesn't know.</p> <p>2 I think there's got to be an easy way we</p> <p>3 can resolve this. You can have it for the purposes</p> <p>4 of your litigation, but I think you can understand</p> <p>5 why he is sensitive. This is sensitive business</p> <p>6 information for him, and maybe we could work out a</p> <p>7 protective order or something that this isn't going</p> <p>8 to be a matter of public record.</p> <p>9 MR. THEODOROU: I mean, I would raise an</p> <p>10 objection as to the relevance of the questioning,</p> <p>11 vis-a-vis Mr. Davis, as to why it's relevant to the</p> <p>12 instant case, but that's my objection.</p> <p>13 MS. WILLIAMS: As far as I know, I don't</p> <p>14 know who his current contacts are, so I am unable to</p> <p>15 determine at this point the relevance or irrelevance</p> <p>16 of it. In the discovery, we're just trying to</p> <p>17 discover evidence that may lead to --</p> <p>18 MR. THEODOROU: I can tell you and we can</p> <p>19 stipulate that one of the people he is not contacting</p> <p>20 is Mr. Nothern, who is the core of this case.</p> <p>21 MS. WILLIAMS: Mr. Nothern doesn't work at</p> <p>22 Treasury, so my question doesn't go to that right</p> <p>23 now, but --</p> <p>24 MR. THEODOROU: But anyway, I'm just</p> <p>25 raising a relevance objection as to what the</p>                     |

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|---|--|
| <p>1 relevance of it is, but go ahead.</p> <p>2 MS. WILLIAMS: Right. Right now, since we</p> <p>3 don't have an answer to the question, we're unable to</p> <p>4 determine whether it is relevant or irrelevant.</p> <p>5 Nonetheless, we can discuss this off the</p> <p>6 record, but I do believe that it is a valid question</p> <p>7 to ask, it could lead to the discovery of admissible</p> <p>8 evidence. And I understand your objection, I dispute</p> <p>9 whether or not the names of people, Mr. Davis's</p> <p>10 friends at Treasury, are really trade secret, but</p> <p>11 we'll discuss this off the record and I'll come back</p> <p>12 to it.</p> <p>13 MR. STANCIL: That would be great, thanks.</p> <p>14 BY MS. WILLIAMS:</p> <p>15 Q. Do you have any employees currently at</p> <p>16 Davis Capital?</p> <p>17 A. No.</p> <p>18 Q. When did you start working out of your</p> <p>19 home?</p> <p>20 A. Last fall, I'm trying to remember, I guess</p> <p>21 it was October 1st, it might have been November 1st,</p> <p>22 I'd have to look it up.</p> <p>23 Q. Why did you start working out of your</p> <p>24 home?</p> <p>25 A. To save money.</p>  | <p>1 A. Not now.</p> <p>2 Q. Did it ever have a website?</p> <p>3 A. Yeah, we did have a website. It was</p> <p>4 developed in pieces. I mean, it first went up some</p> <p>5 time like, I don't know, '96 maybe. And I took it</p> <p>6 down when I moved at the end of 2001, November 2001.</p> <p>7 Q. What was the web address?</p> <p>8 A. The web address?</p> <p>9 Q. If I was to try to log on?</p> <p>10 A. Yeah. I think it was davisicap.com. I</p> <p>11 really don't remember.</p> <p>12 Q. What kind of information was available on</p> <p>13 your website?</p> <p>14 A. Well, we maintained like a brochure, you</p> <p>15 know, my bio, my assistant's bio, sample E-mail. On</p> <p>16 Monday mornings, when the Congress was in, I would</p> <p>17 put a calendar out and a sample of that. And a</p> <p>18 description of what I could do for clients and so on.</p> <p>19 And then there was also later on sort of a password</p> <p>20 protected area where you could go in and look up</p> <p>21 everything that I'd put out for like the last year or</p> <p>22 something like that.</p> <p>23 Q. Who had passwords?</p> <p>24 A. What's that?</p> <p>25 Q. Who had passwords?</p>   |
| Page 31   | Page 33  |
| <p>1 Q. And before you started working out of your</p> <p>2 home, where was your office?</p> <p>3 A. 1100 17th Street, Northwest, I'm trying to</p> <p>4 remember the suite number.</p> <p>5 Q. Was it 604?</p> <p>6 A. Yeah, I think it was 604, yeah.</p> <p>7 Q. Did Davis Capital's office always reside</p> <p>8 at 1100 17th Street before you started working in</p> <p>9 your home?</p> <p>10 A. No, no. Actually, I was nine years right</p> <p>11 across the street from here at Capitol Court, 503</p> <p>12 Capital Court from -- I think I moved in there some</p> <p>13 time in the spring of -- actually, it was early in</p> <p>14 the year, it was like February of '93. And in</p> <p>15 November '01, my landlord just decided after all</p> <p>16 those years to kick me out for a bigger tenant, and I</p> <p>17 was forced to find other space.</p> <p>18 Q. Before you moved in to Capital Court in</p> <p>19 February of '93, where did -- where was Davis</p> <p>20 Capital's offices, because you said you had formed it</p> <p>21 in November.</p> <p>22 A. Right, a friend of mine in the trade</p> <p>23 association just let me use an office for a few</p> <p>24 months to see if I could get a viable business going.</p> <p>25 Q. Does Davis Capital have a website?</p> | <p>1 A. Paying clients.</p> <p>2 Q. Did anyone else have a password besides</p> <p>3 the paying clients and employees at Davis Capital?</p> <p>4 A. Whew, that's a good question. I mean, I</p> <p>5 comp my services to some -- you know, there's some</p> <p>6 people that I comp my service to, and so they might</p> <p>7 have had that.</p> <p>8 Q. And besides -- when you say that certain</p> <p>9 things were password protected, was -- did certain</p> <p>10 clients have different passwords?</p> <p>11 A. Yeah.</p> <p>12 Q. Were there different areas that were</p> <p>13 password protected for certain clients?</p> <p>14 A. No, there was just one password, that just</p> <p>15 got you into what I'd put out.</p> <p>16 Q. So there was a body of information that</p> <p>17 was password protected, and if someone had the</p> <p>18 password they could view that body of information?</p> <p>19 A. Right. I mean, we had different passwords</p> <p>20 for each client, but it got you into the same, you</p> <p>21 know, it was basically everything that I had put out</p> <p>22 in the past year.</p> <p>23 Q. What was your job title at Davis Capital?</p> <p>24 A. I made it up, I'm president of Davis</p> <p>25 Capital Investment Ideas.</p> |

9 (Pages 30 to 33)

Peter Davis, Jr.

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|--|---|
| <p>1 Q. And as president of Davis Capital, what</p> <p>2 did you do? I understand what you do now, I'm trying</p> <p>3 to find out what you did before you moved the company</p> <p>4 to your home?</p> <p>5 A. Show up at work at 7:30 in the morning,</p> <p>6 read a whole lot of information from various</p> <p>7 information services, newspapers, start writing</p> <p>8 material for an E-mail to clients, you know, or get</p> <p>9 my assistant to start writing it and start calling</p> <p>10 around collecting information, searching the web for</p> <p>11 information.</p> <p>12 And, you know, at some point during the</p> <p>13 day, put something out. I would also be developing</p> <p>14 information sources, meeting new staff on the Hill or</p> <p>15 new people at Congress -- in the Administration. I</p> <p>16 would be helping people look for jobs, you know, as a</p> <p>17 way of getting to know them, and that sort of thing.</p> <p>18 I would occasionally have clients in for</p> <p>19 meetings with Administration officials and people on</p> <p>20 the Hill, but I mean, the last one of those meetings</p> <p>21 was I think in, I don't know, some time in early</p> <p>22 2001. I haven't had any since.</p> <p>23 Q. Did you put out E-mails to clients when</p> <p>24 Davis Capital was located at 1100 17th Street?</p> <p>25 A. Oh, sure.</p> | <p>1 Q. What are they?</p> <p>2 A. My electronic brochure for my business.</p> <p>3 Q. Are they true and correct copies of an</p> <p>4 electronic brochure from your business?</p> <p>5 A. Yes.</p> <p>6 Q. Could you tell me the dates of these three</p> <p>7 documents? And I'd refer you to the first page at</p> <p>8 the bottom.</p> <p>9 A. October 4, '01, April 5, '01, and August</p> <p>10 30 of 2000.</p> <p>11 Q. Were you involved in the creation of these</p> <p>12 documents?</p> <p>13 A. Sure.</p> <p>14 Q. When you say they were electronic</p> <p>15 documents, were they available on Davis Capital's</p> <p>16 website?</p> <p>17 A. Yes.</p> <p>18 Q. Did anyone assist you in the creation of</p> <p>19 the documents?</p> <p>20 A. Yes.</p> <p>21 Q. Who?</p> <p>22 A. My assistant, Allyson Sullivan.</p> <p>23 Q. What was Ms. Sullivan's job title at Davis</p> <p>24 Capital?</p> <p>25 A. Policy analyst.</p>   |
| Page 35  | Page 37   |
| <p>1 Q. How often did the E-mails go out at that</p> <p>2 time?</p> <p>3 A. Same, same frequency all along.</p> <p>4 Q. Did you also send faxes to clients?</p> <p>5 A. Yeah, faxes were the main way we -- we put</p> <p>6 things out up until, geez, I don't know, '95 or '96,</p> <p>7 I forget exactly when we stopped doing faxes and</p> <p>8 shifted to E-mail. But when I started the business,</p> <p>9 I was faxing exclusively, you know, broadcast faxing</p> <p>10 and at some point in the mid-'90s, that shifted over</p> <p>11 to E-mail.</p> <p>12 MS. WILLIAMS: I'd like to have this</p> <p>13 marked as Exhibit 4.</p> <p>14 (Davis Exhibit Nos. 4, 5 &amp; 6 were</p> <p>15 marked for identification.)</p> <p>16 BY MS. WILLIAMS:</p> <p>17 Q. I'd want to refer you to the date at the</p> <p>18 bottom, which is how you can distinguish the</p> <p>19 documents.</p> <p>20 MR. THEODOROU: So we have three exhibits,</p> <p>21 4, 5 and 6, right?</p> <p>22 MS. WILLIAMS: Yes.</p> <p>23 BY MS. WILLIAMS:</p> <p>24 Q. Do you recognize these documents, sir?</p> <p>25 A. Yes, I do.</p>   | <p>1 Q. When did she come to work for Davis</p> <p>2 Capital?</p> <p>3 A. I don't remember the exact date, but it</p> <p>4 was some time in early 2000, like, I don't know, I</p> <p>5 can't remember whether it was January, February,</p> <p>6 March, some time early in 2000.</p> <p>7 Q. What were Ms. Sullivan's job</p> <p>8 responsibilities as policy analyst?</p> <p>9 A. I would rely on her to take some of the</p> <p>10 information sources we'd get every morning. And you</p> <p>11 know, I'd pick out the ones that I thought were worth</p> <p>12 writing up. And she would summarize them into like a</p> <p>13 paragraph and look for a link for any associated</p> <p>14 information source and that would be the basis for</p> <p>15 forming our E-mail.</p> <p>16 Q. Were there any other employees of Davis</p> <p>17 Capital, besides Ms. Sullivan?</p> <p>18 A. Well, I had assistants before her, a</p> <p>19 number of them starting in, geez, I don't know, I</p> <p>20 can't remember. Some time in '93 or '94, I started</p> <p>21 hiring assistants and I had a succession of</p> <p>22 assistants, you know, one at a time.</p> <p>23 Q. Did you have a secretary?</p> <p>24 A. I said I just had one assistant, that was</p> <p>25 it.</p> |

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|---|--|
| <p>1 Q. So no secretary, just the one policy</p> <p>2 analyst?</p> <p>3 A. Well, she'd pick up the phone, I'd pick up</p> <p>4 the phone and you know --</p> <p>5 Q. Besides posting these brochures on your</p> <p>6 website, did you do anything else with the brochures?</p> <p>7 A. We'd print them out and take them with us</p> <p>8 when we went on a marketing trip.</p> <p>9 Q. When you updated the brochure, did you</p> <p>10 remove the old brochure from the website and then</p> <p>11 post the updated version?</p> <p>12 A. I don't really recall, but I think so. I</p> <p>13 mean, there's no reason to leave up old brochures. I</p> <p>14 couldn't swear to it that there wasn't an old one</p> <p>15 hanging around, I mean websites get full of all kinds</p> <p>16 of old stuff lying around. In other words, it could</p> <p>17 have been on the website and no link, I have no idea.</p> <p>18 Q. I'd like you to refer to Exhibit 4, it's</p> <p>19 dated 10/4/01 and turn to the second page 106970?</p> <p>20 A. Okay.</p> <p>21 Q. I'm referring to the Bates number now.</p> <p>22 A. Right.</p> <p>23 Q. On this page, it states, and I'm looking</p> <p>24 at the second sentence here that starts with "my."</p> <p>25 "My 11 years on Capitol Hill and 16 years advising</p> | <p>1 bill, there are certain things that the Ways and</p> <p>2 Means Committee puts in it. And as soon as I see</p> <p>3 what they put in it, I know that certain of those</p> <p>4 items are going to be a problem on the Senate side,</p> <p>5 or something is likely to drop out in conference.</p> <p>6 And I will say that to a client based on my</p> <p>7 experience.</p> <p>8 Q. Can you turn to page 106975?</p> <p>9 A. Yes.</p> <p>10 Q. Sample weekly calendar, who would prepare</p> <p>11 this calendar?</p> <p>12 A. Sometimes I would, my assistant would. I</p> <p>13 mean, it was a joint effort. I would -- certainly I</p> <p>14 would review it before it went out.</p> <p>15 Q. And what would you do with these weekly --</p> <p>16 these weekly calendars after you prepared them?</p> <p>17 A. We'd send them out and we'd post them on</p> <p>18 the website.</p> <p>19 Q. Where did you get the information</p> <p>20 contained in the weekly calendars?</p> <p>21 A. Two main sources. The National Journal</p> <p>22 keeps a day book that lists a lot of these hearings.</p> <p>23 And then the BNA Daily Report For Executives has</p> <p>24 another list.</p> <p>25 And then there are a lot of things that</p>                        |
| Page 39   | Page 41  |
| <p>1 Wall Street clients have taught me how to get</p> <p>2 Washington information ahead of the media."</p> <p>3 A. Um-hum.</p> <p>4 Q. How did you go about getting this</p> <p>5 information ahead of the media?</p> <p>6 A. Because I can anticipate better than they</p> <p>7 can what's going to happen in the areas I used to</p> <p>8 work -- you know, work in.</p> <p>9 Q. Why were you able to anticipate better</p> <p>10 than the media?</p> <p>11 MR. THEODOROU: Objection.</p> <p>12 MR. STANCIL: Don't answer.</p> <p>13 THE WITNESS: What's that?</p> <p>14 MR. THEODOROU: You can answer after I</p> <p>15 object.</p> <p>16 MR. STANCIL: Unless I tell you not to</p> <p>17 answer, go ahead and answer it.</p> <p>18 THE WITNESS: Oh, I wanted to make sure I</p> <p>19 understand. I'm sorry, repeat the question.</p> <p>20 BY MS. WILLIAMS:</p> <p>21 Q. You said that you could anticipate better</p> <p>22 than the media and I wanted it know why you were able</p> <p>23 to anticipate Washington information better?</p> <p>24 A. Based on my experience. I mean, for</p> <p>25 example -- I mean, the House is working on a tax</p>   | <p>1 happen on the Hill, or downtown, in the</p> <p>2 Administration that aren't on those lists that I may</p> <p>3 know are coming up. And I will go directly to the</p> <p>4 source and call up the press secretary of the Banking</p> <p>5 Committee and say, hey, are you going to markup this</p> <p>6 week and if I get it yes, then I will put it down.</p> <p>7 Q. So some of the information in the calendar</p> <p>8 came from contacting people on the Hill or in the</p> <p>9 Administration?</p> <p>10 MR. THEODOROU: Objection.</p> <p>11 THE WITNESS: Once in a rare while. I</p> <p>12 mean, usually it was just out of the National Journal</p> <p>13 and the BNA Executive Daily Report. But once in a</p> <p>14 while, I would know of an impending hearing or -- you</p> <p>15 know, I'd report it.</p> <p>16 BY MS. WILLIAMS:</p> <p>17 Q. Going back to the questions I was asking</p> <p>18 before about getting information ahead of the media,</p> <p>19 did any of the information that you were able to</p> <p>20 obtain ahead of the media come from any of your</p> <p>21 contacts on the Hill?</p> <p>22 A. Of course.</p> <p>23 Q. Was it your practice to -- and also</p> <p>24 contacts in the Administration?</p> <p>25 A. Sure.</p> |

11 (Pages 38 to 41)

Peter Davis, Jr.

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|---|---|
| <p>1 Q. Was it your practice to notify clients<br/>2 regarding events at Treasury in your weekly calendar?<br/>3 A. Oh, you know, sometimes I'd put down if --<br/>4 I mean, Treasury posts a schedule for the Secretary<br/>5 every Friday afternoon. And I'd -- in fact, they<br/>6 expanded it to include the assistant secretaries and<br/>7 undersecretaries, their appointments.<br/>8 And so, you know, it's public record and<br/>9 I'd sometimes pull that information in, the same way<br/>10 I would -- you know, the Fed, Federal Reserve Bank<br/>11 also has a calendar, the State Department has a<br/>12 calendar. There are all kinds of calendars that are<br/>13 available if you know where to go for them, they are<br/>14 public. And I just -- sometimes I would fold that<br/>15 information into this if I thought it was important<br/>16 to investors.<br/>17 Q. Would you include information about the<br/>18 dates of the Treasury's quarterly refunding press<br/>19 conference?<br/>20 A. Yeah, I usually would. Not always, but<br/>21 I -- yeah, I would usually put that down.<br/>22 Q. Was Davis Capital incorporated?<br/>23 A. No.<br/>24 Q. Was it registered as a partnership?<br/>25 A. No.</p>                   | <p>1 Q. Okay. Was Massachusetts Financial<br/>2 Services a client of Davis Capital in October of<br/>3 2001?<br/>4 A. Yes, it was.<br/>5 Q. I'd like to mark this as Exhibit 7.<br/>6 (Davis Exhibit No. 7 was marked for<br/>7 identification.)<br/>8 BY MS. WILLIAMS:<br/>9 Q. Do you recognize this document, sir?<br/>10 A. Yes.<br/>11 Q. What is it?<br/>12 A. It's a list out of my address book.<br/>13 Q. A list of what?<br/>14 A. Most of them are clients, there are one or<br/>15 two on here that were comped.<br/>16 Q. When you say comped, what do you mean?<br/>17 A. No charge. Like for example, the second<br/>18 one, Stu Sweet, capital analyst, he's a consultant<br/>19 doing similar kinds of work that I am, we knew each<br/>20 other on the Hill and we would share each other's<br/>21 information. So I would send him what I wrote, he<br/>22 would send me what he wrote. We had very different<br/>23 ways of working, but it was helpful for him to see my<br/>24 stuff and it was helpful for me to see his stuff.<br/>25 Q. I'd like to refer to you the top of the</p>  |
| Page 43   | Page 45   |
| <p>1 Q. Did it have any -- a board of directors?<br/>2 A. No.<br/>3 Q. What was the salary of Ms. Sullivan?<br/>4 A. It was -- the gross salary was \$2,000 on<br/>5 the 15th and 30th of each month so 24,000 per year.<br/>6 Q. How did Davis Capital go about obtaining<br/>7 clients?<br/>8 A. I'd ask current clients to refer me to<br/>9 people, I would -- in the course of my speeches<br/>10 sometimes I would meet people. Sometimes people<br/>11 would call me up out of the blue if they saw me on<br/>12 CNBC or if they heard about -- I would encourage my<br/>13 clients if they thought someone was interested in<br/>14 another firm to forward my E-mail to them, and<br/>15 sometimes that would generate some contact.<br/>16 Sometimes I'd meet people at professional meetings of<br/>17 the National Association of Business Economists or<br/>18 the National Economists Club.<br/>19 Q. Approximately how many clients did Davis<br/>20 Capital have in October of 2001?<br/>21 A. In the papers my attorney has, there's a<br/>22 list, but I can't remember off the top of my head.<br/>23 It was, I don't know, 15 or 16. But, you know,<br/>24 that's a rough estimate. I don't, you know, there's<br/>25 a list and --</p> | <p>1 document, address book list 3, all clients last<br/>2 modified on 5/11/01?<br/>3 A. Um-hum.<br/>4 Q. When you say all clients, you say this<br/>5 also includes clients who were comped?<br/>6 A. I'm saying Stu Sweet never paid me a dime.<br/>7 We would share information. I think all the rest on<br/>8 here -- let me just check. Well, for example I don't<br/>9 remember Macquarie Holdings being a client, they may<br/>10 have been a potential client. So, you know, they<br/>11 were -- I don't recall that they ever paid me, but<br/>12 they would be on the list as a potential client.<br/>13 Putnam, they were a client at one point,<br/>14 but they were not a client at that time. And Dean<br/>15 Mackey, for example, was an economist at the Fed<br/>16 involved in tax policy and I knew him. And when he<br/>17 went to Putnam, I put him on my list as a potential<br/>18 client. Yeah, I mean -- I don't recall Stark<br/>19 Investment, I mean, they must have been a potential<br/>20 client. Gail Fosler of the conference board was<br/>21 someone that I comped my service to.<br/>22 Q. So is it fair to say that this list<br/>23 includes clients that were comped and some potential<br/>24 clients and also it might include a former client?<br/>25 A. Right. But mostly it was my current</p> |

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Peter Davis, Jr.

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|  |   |
|--|---|
| <p style="text-align: right;">Page 46</p> <p>1 clients.</p> <p>2 Q. Were there any clients that you had as of</p> <p>3 May 11th, 2001 who were left off of this list that</p> <p>4 you know of?</p> <p>5 A. I don't think so. It just seems to --</p> <p>6 this -- I recognize all my major clients. I mean,</p> <p>7 one of the problems in my business is that from month</p> <p>8 to month, there can be variation in who is a client</p> <p>9 and who isn't, somebody calls you up, sorry, Pete, we</p> <p>10 had a budget cut, you've got to go. Somebody new</p> <p>11 comes on. And so there's always sort of the existing</p> <p>12 client base and potential clients and comped clients.</p> <p>13 And there's all this flux, but I'm pretty sure all my</p> <p>14 clients are included in this list.</p> <p>15 Q. Do you see Mr. Nothern's name on the list?</p> <p>16 A. Yes, I do.</p> <p>17 Q. I'd like to have this marked as Exhibit 8.</p> <p>18 (Davis Exhibit No. 8 was marked for</p> <p>19 identification.)</p> <p>20 BY MS. WILLIAMS:</p> <p>21 Q. Do you recognize this document?</p> <p>22 A. Yes, I do.</p> <p>23 Q. What is it?</p> <p>24 A. Oh, it's what I call my call list. It's a</p> <p>25 rank ordering of if I'm going to call clients, the</p> | <p style="text-align: right;">Page 48</p> <p>1 less demand for my services than other clients. And</p> <p>2 therefore, the second reason, they were paying me</p> <p>3 what I sort of thought of as my minimum fee, and I'm</p> <p>4 trying to remember what that was. I guess it was a</p> <p>5 1,000 a month, it could have been 10,000 a year, I</p> <p>6 think it was a 1,000 a month.</p> <p>7 Q. You said that some firms reacted quickly.</p> <p>8 A. Um-hum.</p> <p>9 Q. What did you mean by that?</p> <p>10 A. That if I called up, I might be talking to</p> <p>11 my contact, but I might also be phoned into their</p> <p>12 chief trader. You could be sitting there waiting to</p> <p>13 execute trades based on my information.</p> <p>14 Q. Who prepared this document?</p> <p>15 A. I did.</p> <p>16 Q. Do you know whose handwriting is on it?</p> <p>17 A. It's mine.</p> <p>18 Q. Do you know when the document was created?</p> <p>19 A. Yeah, there's a date stamp on the bottom</p> <p>20 of it from the -- my personal contract manager's</p> <p>21 software said this was printed 8:29 a.m., May 2nd of</p> <p>22 2001.</p> <p>23 Q. Do you see Mr. Nothern's name on this</p> <p>24 document?</p> <p>25 A. Yes, I do.</p>  |
| <p style="text-align: right;">Page 47</p> <p>1 order in which I will call them.</p> <p>2 Q. How did you determine the order in which</p> <p>3 you were going to call clients?</p> <p>4 A. By longevity, by how much they were paying</p> <p>5 me. For example, some clients were big clients where</p> <p>6 I'm dealing with 40 people at one firm. And so they</p> <p>7 are paying me a larger fee because I'm doing more</p> <p>8 work for them.</p> <p>9 And also some firms are -- I mean, the</p> <p>10 last criterion was that there were some firms that</p> <p>11 reacted very quickly to information and some firms</p> <p>12 that reacted very slowly to it. And so I would tend</p> <p>13 to call up the ones who cared about the timeliness of</p> <p>14 the information more than others first.</p> <p>15 Q. Did you consider Massachusetts Financial</p> <p>16 Services to be -- which I'm going to call MFS, if</p> <p>17 that's okay?</p> <p>18 A. That's what I call them, too.</p> <p>19 Q. Did you consider them to be a big client?</p> <p>20 A. No.</p> <p>21 Q. Were they a small client?</p> <p>22 A. Yes.</p> <p>23 Q. And why did you consider them to be a</p> <p>24 small client?</p> <p>25 A. Two reasons. One, they were -- they had</p>            | <p style="text-align: right;">Page 49</p> <p>1 Q. Why are some of the names -- some names</p> <p>2 and numbers are written at the bottom of the list.</p> <p>3 Do you know why they weren't included in the</p> <p>4 typewritten portion of the list?</p> <p>5 A. Yes, because they were potential clients,</p> <p>6 they were not current clients, although I think Nexis</p> <p>7 did become a client for a few months that summer, but</p> <p>8 I'd have to check that.</p> <p>9 Q. I'd like to have this marked -- one</p> <p>10 second.</p> <p>11 What occasions did you use this call list?</p> <p>12 A. Whenever I had something that I felt was</p> <p>13 market moving to report to my clients. I was in the</p> <p>14 habit of when something was really hot, like the</p> <p>15 conference on the tax bill just blew up, don't look</p> <p>16 like there's going to be a tax bill, I would</p> <p>17 immediately E-mail all my clients a paragraph saying</p> <p>18 that. And then I would start calling to give</p> <p>19 clients -- make sure they got it, focused on it. And</p> <p>20 then sometimes they might have a quick question. And</p> <p>21 I would try to get through my whole list as fast as I</p> <p>22 could, I would just start calling people one after</p> <p>23 the other, all the way to the bottom.</p> <p>24 MR. STANCIL: Erica, I don't want to</p> <p>25 interrupt, do you have a break planned at any point,</p> |

13 (Pages 46 to 49)

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|--|---|
| <p>1 we need some water at some point soon. I don't want</p> <p>2 to interrupt where you're going, we can go a little</p> <p>3 bit longer.</p> <p>4 MS. WILLIAMS: We can take a break here.</p> <p>5 MR. STANCIL: It's totally up to you.</p> <p>6 MS. WILLIAMS: Before I mark the next</p> <p>7 exhibit, absolutely.</p> <p>8 MR. STANCIL: Is that okay?</p> <p>9 THE WITNESS: Absolutely.</p> <p>10 THE VIDEOGRAPHER: This is the end of tape</p> <p>11 number 1 in the video deposition of Peter Davis. Off</p> <p>12 the record at 10:38:19 a.m. on April 19th, 2006.</p> <p>13 (Recess.)</p> <p>14 THE VIDEOGRAPHER: This is the beginning</p> <p>15 of tape number 2 in the videotaped deposition of</p> <p>16 Mr. Peter Davis. On the record at 10:56:46 a.m. on</p> <p>17 April 19th, 2006.</p> <p>18 BY MS. WILLIAMS:</p> <p>19 Q. Mr. Davis, I wanted to ask you a few more</p> <p>20 questions about what's been marked as Exhibit 8.</p> <p>21 A. Um-hum.</p> <p>22 Q. I notice that there are fax numbers listed</p> <p>23 on the exhibit; do you see those?</p> <p>24 A. Yes.</p> <p>25 Q. Did you send clients faxes in 2001?</p> | <p>1 in May.</p> <p>2 Q. Did you typically carry a hard copy of the</p> <p>3 list with you?</p> <p>4 A. Yes.</p> <p>5 Q. Did you consider Goldman Sachs to be a big</p> <p>6 client?</p> <p>7 A. Yes, they were new.</p> <p>8 Q. Can you tell me why, and I'm referring to</p> <p>9 the last typewritten line here, John Youngdahl,</p> <p>10 Goldman Sachs, do you see that on this document?</p> <p>11 A. Yes.</p> <p>12 Q. Why Mr. Youngdahl's name appears near the</p> <p>13 bottom of the document?</p> <p>14 A. Because they were new, I had had him down</p> <p>15 at the bottom, and just hadn't taken time to move him</p> <p>16 up. I mean, I think he was a potential client when</p> <p>17 this list was printed, whereas they became a client a</p> <p>18 few months later.</p> <p>19 Q. Do you know if between May 2nd, 2001 and</p> <p>20 October 31st, 2001 if you updated this list?</p> <p>21 A. I probably did, but I don't recall</p> <p>22 specifically. I updated whenever I got time to</p> <p>23 update it. Sometimes I went around saying, geez, I</p> <p>24 have to update this list and just not get around to</p> <p>25 it for a month or two.</p> |
| Page 51  | Page 53   |
| <p>1 A. Once in a rare while. By that point, I</p> <p>2 was sending E-mail, but sometimes we'd get a document</p> <p>3 or something that, you know, I couldn't get scanned</p> <p>4 very easily or something. So on rare occasions, we'd</p> <p>5 fax something.</p> <p>6 Q. You also -- you stated before we took a</p> <p>7 break that you would send E-mails when there was some</p> <p>8 market movement, when you said the market -- you had</p> <p>9 marked moving information?</p> <p>10 A. Right.</p> <p>11 Q. Do you recall saying that?</p> <p>12 A. Right.</p> <p>13 Q. And you gave an example of some market</p> <p>14 moving information.</p> <p>15 A. Right.</p> <p>16 Q. Did you consider Treasury's announcement</p> <p>17 on October 31st, regarding the cancellation of the</p> <p>18 30-year bond to be market moving information?</p> <p>19 MR. THEODOROU: Objection.</p> <p>20 BY MS. WILLIAMS:</p> <p>21 Q. You can answer.</p> <p>22 A. Yes.</p> <p>23 Q. Did you use this list on October 31st,</p> <p>24 2001 to call clients?</p> <p>25 A. Yes, or one like it. This was printed out</p>                              | <p>1 Q. Did you carry a PDA?</p> <p>2 A. Yes, I did at the time.</p> <p>3 Q. Was the client information that is</p> <p>4 contained on this list also contained in your PDA?</p> <p>5 A. Yes.</p> <p>6 Q. When did you first start using a PDA?</p> <p>7 A. I don't recall.</p> <p>8 Q. Were you still using a PDA October 31st,</p> <p>9 2001?</p> <p>10 A. Yes.</p> <p>11 Q. Did you also have a Blackberry?</p> <p>12 A. No.</p> <p>13 Q. I'd like to have it marked as Exhibit 9.</p> <p>14 (Davis Exhibit No. 9 was marked for</p> <p>15 identification.)</p> <p>16 BY MS. WILLIAMS:</p> <p>17 Q. Do you recognize this document, sir?</p> <p>18 A. Yes.</p> <p>19 Q. What is it?</p> <p>20 A. It's a printout of my contact manager data</p> <p>21 file.</p> <p>22 Q. Is it a true and correct copy of the</p> <p>23 printout from your data file?</p> <p>24 A. Yes.</p> <p>25 Q. Do you know the date of this document?</p>   |

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|---|--|
| <p>1 A. Yeah, it was printed out 10:16 a.m. 11 --</p> <p>2 November 9th, 2001.</p> <p>3 Q. Who entered or created this data file?</p> <p>4 A. I did.</p> <p>5 Q. And could you tell me who -- what names</p> <p>6 appear on this data file, like what kind of</p> <p>7 information you entered into the data file?</p> <p>8 A. Everybody that I called.</p> <p>9 Q. And did this include clients of Davis</p> <p>10 Capital?</p> <p>11 A. Yes.</p> <p>12 Q. Did it include people who were not clients</p> <p>13 of Davis Capital?</p> <p>14 A. Yes.</p> <p>15 Q. Is it fair to say that this is -- this was</p> <p>16 an address for business and personal use?</p> <p>17 A. Yes.</p> <p>18 Q. Did Davis Capital, and I might have</p> <p>19 already asked this, charge a standard fee to clients?</p> <p>20 A. Yes, but there was variation also.</p> <p>21 Q. What was the variation based on?</p> <p>22 A. Utilization.</p> <p>23 Q. What was the standard fee?</p> <p>24 A. \$1500 a month.</p> <p>25 Q. Do you know if that standard fee was</p>  | <p>1 that was the base product. Everybody got that. And</p> <p>2 the additional services were phone calls, custom</p> <p>3 research, meetings, talking to their clients,</p> <p>4 answering their questions.</p> <p>5 Q. How are you compensated by Davis Capital?</p> <p>6 A. Clients send me checks, I deposit them.</p> <p>7 Q. Let me be more specific. Did you receive</p> <p>8 a salary from Davis Capital?</p> <p>9 A. No.</p> <p>10 Q. A set salary?</p> <p>11 A. No, I'm a sole prop. I mean, I take in</p> <p>12 gross income, I pay expenses and whatever's left is</p> <p>13 mine.</p> <p>14 Q. Do you know approximately how much you</p> <p>15 earned from Davis Capital in 2001?</p> <p>16 A. Geez. Not offhand, I'd have to go check</p> <p>17 my tax records. It was -- I don't know, it was a</p> <p>18 little over 200,000, I don't know, I'd have to check</p> <p>19 my tax records.</p> <p>20 Q. You testified that MFS was one of Davis</p> <p>21 Capital's clients. Do you know when MFS became a</p> <p>22 client of Davis Capital?</p> <p>23 A. I don't recall specifically, some time in</p> <p>24 the mid-'90s.</p> <p>25 Q. How did MFS become a client of Davis</p> |
| Page 55   | Page 57  |
| <p>1 charged to MFS?</p> <p>2 A. I said earlier that I recall that they</p> <p>3 were paying me \$1,000 a month.</p> <p>4 Q. So less than the standard fee?</p> <p>5 A. Right.</p> <p>6 Q. Do you know why they were paying less than</p> <p>7 the standard fee?</p> <p>8 A. Less demand. We would negotiate, you</p> <p>9 know, every client based on their demand.</p> <p>10 Q. When you say demand, what are you</p> <p>11 referring to?</p> <p>12 A. How much of my time I spent. Some clients</p> <p>13 needed explanations about Washington, others didn't</p> <p>14 so --</p> <p>15 Q. Did MFS receive E-mails that you would</p> <p>16 send to -- did you send mass E-mails to clients,</p> <p>17 meaning E-mails that were sent to more than one</p> <p>18 client?</p> <p>19 A. Yes.</p> <p>20 Q. Did MFS receive those E-mails as a general</p> <p>21 matter?</p> <p>22 A. I assume they did, yeah. I sent them.</p> <p>23 Q. So when you say less demand, you don't</p> <p>24 mean that you would leave them off of E-mails that --</p> <p>25 A. No, the E-mail was my standard product,</p> | <p>1 Capital?</p> <p>2 A. It was a referral from another client.</p> <p>3 Q. What other client?</p> <p>4 A. Bob Faulkner at Sangamon Trading.</p> <p>5 Q. How did -- and when you say it was a</p> <p>6 referral, did someone from MFS contact you?</p> <p>7 A. Bob Faulkner at Sangamon Trading said you</p> <p>8 might call Steve Nothern over at MFS.</p> <p>9 Q. So you contacted MFS?</p> <p>10 A. Right.</p> <p>11 Q. And specifically Mr. Nothern?</p> <p>12 A. Yes.</p> <p>13 Q. Do you recall what you discussed with</p> <p>14 Mr. Nothern when you contacted him?</p> <p>15 A. Hi, Bob Faulkner said I should give you a</p> <p>16 call, just wanted to introduce myself, arrange to</p> <p>17 send you my material. I seem to recall I paid a</p> <p>18 visit to Boston to visit Steve.</p> <p>19 Q. Had you met Mr. Nothern before you called</p> <p>20 him regarding the referral that you had received from</p> <p>21 Mr. Faulkner?</p> <p>22 A. No.</p> <p>23 Q. Had -- was Mr. Nothern expecting your call</p> <p>24 when you called, had he also heard from Mr. Faulkner?</p> <p>25 A. Yeah, I think so.</p>   |

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|--|---|
| <p>1 Q. Did Mr. Nothern discuss anything about<br/>2 what kind of services he would be looking for from<br/>3 Davis Capital?<br/>4 A. I don't recall. I told him what I did and<br/>5 you know, we talked about whether that would be<br/>6 useful to him.<br/>7 Q. What is your recollection as to what<br/>8 Mr. Nothern said as to whether it would be useful to<br/>9 him?<br/>10 MR. THEODOROU: Objection.<br/>11 MR. STANCIL: If you remember, go ahead<br/>12 and answer.<br/>13 THE WITNESS: I don't have any<br/>14 recollection of what he said. That was -- that was<br/>15 at least ten years ago.<br/>16 BY MS. WILLIAMS:<br/>17 Q. Did you have any understanding as to<br/>18 whether Mr. Nothern was interested in the services of<br/>19 Davis Capital based on that conversation?<br/>20 MR. THEODOROU: Objection.<br/>21 BY MS. WILLIAMS:<br/>22 Q. You can answer.<br/>23 MR. STANCIL: If you remember, go ahead<br/>24 and answer.<br/>25 THE WITNESS: Well, I mean, if he seemed</p>   | <p>1 Q. Were other people besides Mr. Nothern<br/>2 present?<br/>3 A. I'm not clear. I just don't remember.<br/>4 Q. Do you recall what happened during that<br/>5 meeting?<br/>6 A. We talked about Washington policy issues.<br/>7 Q. Do you recall if you discussed your<br/>8 background at all?<br/>9 A. Sure.<br/>10 Q. Do you recall if you provided anyone with<br/>11 a copy of your firm brochure?<br/>12 A. Yes, I probably presented it to him. I<br/>13 don't have a specific recollection, but I probably<br/>14 already sent it to him before I arrived. But I'm<br/>15 sure I had one with me, because it was a standard<br/>16 practice.<br/>17 Q. Do you know if you entered into any<br/>18 agreements with anyone at the meeting?<br/>19 A. Entered into agreements?<br/>20 Q. Were there any documents signed?<br/>21 A. No.<br/>22 Q. Were you retained during that meeting?<br/>23 A. I don't recall. It was probably a follow<br/>24 up phone call later on that said, you know, we'll<br/>25 retain you or something, but, you know, I don't think</p> |
| Page 59  | Page 61   |
| <p>1 interested, we talked.<br/>2 BY MS. WILLIAMS:<br/>3 Q. You said that you eventually went to<br/>4 Boston. Do you recall when that meeting was?<br/>5 A. No.<br/>6 Q. Do you know how long after the<br/>7 conversation you had with Mr. Nothern that you went<br/>8 to Boston?<br/>9 A. I don't recall.<br/>10 Q. Do you know if it was a year later?<br/>11 A. No, no, it was some time a few months<br/>12 later, I had some other clients to visit in Boston.<br/>13 Q. Whose idea was it for you to go to Boston<br/>14 to visit MFS?<br/>15 A. I don't recall. I -- I had other clients<br/>16 up in Boston. And I think I suggested that, you<br/>17 know -- I mean, I called -- I think I said, hey, how<br/>18 about if I drop in, because I'm going to be up there<br/>19 visiting other clients.<br/>20 Q. Do you recall who was present at the<br/>21 meeting that you had at MFS?<br/>22 A. No.<br/>23 Q. Do you know if Mr. Nothern was present at<br/>24 that meeting?<br/>25 A. Yes.</p> | <p>1 it was on the spot.<br/>2 Q. Do you know if MFS ever entered into a<br/>3 written agreement retaining the services of Davis<br/>4 Capital?<br/>5 A. I don't recall one. I mean, most of my<br/>6 relationships were a handshake.<br/>7 Q. Do you recall how long the meeting lasted?<br/>8 A. No.<br/>9 Q. When you were -- first started providing<br/>10 service to MFS, did they go through any sort of trial<br/>11 period?<br/>12 A. Hmm, I don't recall. I mean, I have a<br/>13 standard practice where as soon as I make contact<br/>14 with a potential client, I just put them on my E-mail<br/>15 list and start sending them stuff. And if they<br/>16 haven't retained me within a few months, my standard<br/>17 practice is to drop them off.<br/>18 Q. Were you ever provided with any E-mail --<br/>19 E-mail contacts at MFS?<br/>20 A. Yes.<br/>21 Q. Who provided you with the list of E-mail<br/>22 contacts?<br/>23 A. Steve.<br/>24 Q. Do you recall how many E-mails were on<br/>25 that list?</p>   |

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| Page 62   | Page 64   |
|---|---|
| <p>1 A. Not really. I mean, it was a handful, I</p> <p>2 really don't recall.</p> <p>3 Q. When you say a handful, less than 10?</p> <p>4 A. Yeah.</p> <p>5 Q. But more than just Mr. Nothern?</p> <p>6 A. Yeah, there were a few other people there.</p> <p>7 Q. Do you recall any of those other people's</p> <p>8 names as far as the E-mails that you would send to</p> <p>9 MFS?</p> <p>10 A. No.</p> <p>11 Q. Did you have any other contacts that you</p> <p>12 recall at MFS besides Mr. Nothern?</p> <p>13 A. There was one other person that I talked</p> <p>14 to once in a rare while, but I don't even remember</p> <p>15 his name.</p> <p>16 Q. It was a man?</p> <p>17 A. Yes.</p> <p>18 Q. Do you know what department that person</p> <p>19 worked in?</p> <p>20 A. No.</p> <p>21 Q. When you say that you sent -- did you add</p> <p>22 MFS -- you eventually added MFS to your E-mail list?</p> <p>23 A. Correct.</p> <p>24 Q. Did they receive the weekly calendars that</p> <p>25 you sent out?</p> | <p>1 BY MS. WILLIAMS:</p> <p>2 Q. Do you have a general recollection?</p> <p>3 MR. THEODOROU: Objection.</p> <p>4 THE WITNESS: He might have called me up a</p> <p>5 few times, usually I was calling him.</p> <p>6 BY MS. WILLIAMS:</p> <p>7 Q. How often did you call Mr. Nothern?</p> <p>8 A. Not that often, once in a while, once</p> <p>9 every month or so maybe.</p> <p>10 Q. Why did you call Mr. Nothern?</p> <p>11 A. To stay in touch, he was a client.</p> <p>12 Q. What kind of things were discussed during</p> <p>13 these calls?</p> <p>14 MR. THEODOROU: Objection.</p> <p>15 THE WITNESS: Usually, you know, I'd be</p> <p>16 calling about Washington policy information, you</p> <p>17 know, that --</p> <p>18 BY MS. WILLIAMS:</p> <p>19 Q. Was there any information that you felt</p> <p>20 Mr. Nothern was particularly interested in?</p> <p>21 MR. THEODOROU: Objection.</p> <p>22 THE WITNESS: He was generally interested</p> <p>23 in, you know, the deficit and what was -- what</p> <p>24 federal borrowing was going to be required.</p> <p>25 BY MS. WILLIAMS:</p>  |
| Page 63   | Page 65   |
| <p>1 A. Sure.</p> <p>2 Q. And if you sent faxes to clients, did they</p> <p>3 also receive those?</p> <p>4 A. Yes.</p> <p>5 MR. STANCIL: To be clear, you sent them.</p> <p>6 Do you have knowledge as to whether they received</p> <p>7 them or not?</p> <p>8 THE WITNESS: No.</p> <p>9 BY MS. WILLIAMS:</p> <p>10 Q. Did you ever discuss with Mr. Nothern if</p> <p>11 he had received E-mails that you sent?</p> <p>12 MR. THEODOROU: Objection.</p> <p>13 BY MS. WILLIAMS:</p> <p>14 Q. You can answer.</p> <p>15 A. Um, I don't recall. I mean, all I know is</p> <p>16 I sent the stuff out.</p> <p>17 Q. Did he ever complain that he wasn't</p> <p>18 receiving E-mails?</p> <p>19 A. Not that I recall, no.</p> <p>20 Q. Do you recall ever having any discussions</p> <p>21 with Mr. Nothern regarding any content of any E-mails</p> <p>22 you might have sent him?</p> <p>23 MR. THEODOROU: Objection.</p> <p>24 THE WITNESS: Um, I don't have any</p> <p>25 specific recollection.</p>                    | <p>1 Q. And besides the deficit and fed -- federal</p> <p>2 borrowing, was there anything else that you thought</p> <p>3 Mr. Nothern was interested in?</p> <p>4 A. I don't recall him asking me to</p> <p>5 investigate anything in particular, I -- I would just</p> <p>6 give him what I was giving all my clients.</p> <p>7 Q. Did you ever call anyone else at MFS</p> <p>8 besides Mr. Nothern?</p> <p>9 A. This other guy whose name I can't</p> <p>10 remember, I might have called, oh, a few times you</p> <p>11 know, over a few years. I just -- I don't remember</p> <p>12 the guy's name, I -- it was one other guy that I did</p> <p>13 call once on a few occasions.</p> <p>14 Q. Did you ever meet Jeffrey Corinski?</p> <p>15 A. I have no recollection of meeting him.</p> <p>16 Q. Do you know Mr. -- did you ever speak to</p> <p>17 Mr. Corinski?</p> <p>18 A. I have no recollection of him.</p> <p>19 Q. What about Peter Sullivan?</p> <p>20 A. I just don't recall these people.</p> <p>21 Q. Matt Ryan?</p> <p>22 A. The name sounds familiar, but I don't</p> <p>23 recall. My main contact was Steve.</p> <p>24 Q. What about Bob Persons?</p> <p>25 A. I don't recall that name at all.</p> |

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|---|---|
| <p>1 Q. Jim Swanson?</p> <p>2 A. That -- you know, that name sounds a</p> <p>3 little familiar, but I don't recall any conversations</p> <p>4 or meetings.</p> <p>5 Q. Mark Dow?</p> <p>6 A. I don't recall that at all.</p> <p>7 Q. What about Richard Hawkins?</p> <p>8 A. No recollection of that person.</p> <p>9 Q. Or Bill Adams?</p> <p>10 A. No recollection of that person.</p> <p>11 Q. When you sent faxes to MFS who did you</p> <p>12 send them to?</p> <p>13 A. To Steve.</p> <p>14 Q. Do you know if you included the other</p> <p>15 gentleman that you can't remember his name on that</p> <p>16 fax?</p> <p>17 MR. THEODOROU: Objection.</p> <p>18 THE WITNESS: I don't recall. Usually</p> <p>19 when I sent a fax, it was to one person at each firm.</p> <p>20 BY MS. WILLIAMS:</p> <p>21 Q. Did you ask that person to distribute the</p> <p>22 fax to others?</p> <p>23 A. No.</p> <p>24 Q. Did you ever ask Mr. Nothern to spread</p> <p>25 information that he received from you to other</p>                      | <p>1 them at the bottom and mail them, or some clients I</p> <p>2 faxed them to.</p> <p>3 Q. And why was this sent to Ms. Femino?</p> <p>4 A. She must have been the payable person at</p> <p>5 that time. I mean --</p> <p>6 Q. What was this invoice for?</p> <p>7 A. It was for \$12,000 for a full year's</p> <p>8 service from October 1, 2000 through September 30th,</p> <p>9 2001.</p> <p>10 Q. Was it your practice to bill by the year?</p> <p>11 A. It varied from client to client depending</p> <p>12 on what they felt was most convenient. So evidently,</p> <p>13 I was billing them on an annual basis at \$1,000 a</p> <p>14 month.</p> <p>15 Q. I see the document says consulting</p> <p>16 services for Steven Nothern, Massachusetts Financial</p> <p>17 Services?</p> <p>18 A. Right.</p> <p>19 Q. Were you consulting for anyone else at MFS</p> <p>20 during this time period?</p> <p>21 A. Well, I would be available to basically</p> <p>22 anybody at the firm who had a question that I could</p> <p>23 answer about Washington policy. Our standard</p> <p>24 practice was when I had a client, there would be a</p> <p>25 main contact, but I would be available to anybody who</p>                |
| Page 67   | Page 69   |
| <p>1 people?</p> <p>2 A. Well, like with a lot of my clients, you</p> <p>3 know, I might have asked him if he knew of other</p> <p>4 potential clients I might approach. But no, other</p> <p>5 than that, I can't -- and I don't have any specific</p> <p>6 recollection of any of that.</p> <p>7 Q. Do you recall who at MFS you sent your</p> <p>8 bills to?</p> <p>9 A. No.</p> <p>10 Q. I'd like to have this marked as Exhibit</p> <p>11 10.</p> <p>12 (Davis Exhibit No. 10 was marked for</p> <p>13 identification.)</p> <p>14 BY MS. WILLIAMS:</p> <p>15 Q. Do you recognize this document, sir?</p> <p>16 A. It looks like one of my invoices.</p> <p>17 Q. Who is this invoice to?</p> <p>18 A. Bridgett Femino.</p> <p>19 Q. Where did Ms. Femino work?</p> <p>20 A. MFS, Boston.</p> <p>21 Q. Are those your initials at the bottom?</p> <p>22 A. Yes, they are.</p> <p>23 Q. There's some handwriting at the top, do</p> <p>24 you know whose handwriting that is?</p> <p>25 A. No idea. When I send these out, I initial</p> | <p>1 needed to, you know, for the same fee -- you know,</p> <p>2 for that one fee, I would be available to answer</p> <p>3 questions from other people at the firm.</p> <p>4 Q. So you were available to answer questions</p> <p>5 from other people at MFS besides Mr. Nothern?</p> <p>6 A. Yes.</p> <p>7 Q. You stated that you met with Mr. Nothern</p> <p>8 and possibly others at MFS, did you ever have any</p> <p>9 other in-person meetings with Mr. Nothern?</p> <p>10 A. He came to Washington once or twice, and I</p> <p>11 met with him here.</p> <p>12 Q. When did -- do you recall Mr. Nothern</p> <p>13 first came to Washington to meet with you?</p> <p>14 A. I -- I don't recall.</p> <p>15 Q. Do you know approximately the year?</p> <p>16 A. Some time in the year or so maybe after he</p> <p>17 became a client he -- I don't have any specific</p> <p>18 recollection.</p> <p>19 Q. Who arranged the meeting?</p> <p>20 A. I don't recall.</p> <p>21 Q. Did you suggest that Mr. Nothern come to</p> <p>22 Washington?</p> <p>23 A. One of my services was to arrange meetings</p> <p>24 with people in Washington. And I do recall that</p> <p>25 Steve came down for one of those meetings, and so</p> |

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|--|---|
| <p>1 obviously that would have been at my suggestion. But</p> <p>2 I don't -- you know, there were other reasons for him</p> <p>3 to be here, like, say, he could have possibly</p> <p>4 attended the National Association of Business</p> <p>5 Economists meeting or something, just been here on</p> <p>6 his own.</p> <p>7 Q. Who paid for Mr. Nothern's trip to</p> <p>8 Washington?</p> <p>9 A. I don't know.</p> <p>10 Q. Did you pay for that trip?</p> <p>11 A. No, no.</p> <p>12 Q. Were there other clients involved in this</p> <p>13 meeting?</p> <p>14 A. Yes.</p> <p>15 Q. Do you know who those other clients were?</p> <p>16 A. I think Ward McCarthy was there from Stone</p> <p>17 &amp; McCarthy. And I think there were probably one or</p> <p>18 two others, but I don't recall who they were.</p> <p>19 Q. Was anyone else there from MFS?</p> <p>20 A. No.</p> <p>21 Q. What was your purpose of setting up these</p> <p>22 meetings with clients?</p> <p>23 A. To introduce my clients to leading</p> <p>24 economists and policy makers, and the Administration</p> <p>25 and on Capitol Hill.</p>  | <p>1 the economy's doing, and how the -- you know, what's</p> <p>2 going on with policy matters in Washington.</p> <p>3 Q. Had Mr. Nothern ever mentioned any people</p> <p>4 that he would like to meet with in Washington?</p> <p>5 A. No.</p> <p>6 Q. Did he ever mention any agencies that he</p> <p>7 was interested in visiting?</p> <p>8 A. No.</p> <p>9 Q. Did you notify your clients in advance as</p> <p>10 to who they would be meeting with during their trips</p> <p>11 to Washington?</p> <p>12 A. Yes. However, that was always subject to</p> <p>13 change, because meetings can evaporate very quickly.</p> <p>14 So that was all in flux, right up until you would</p> <p>15 walk into someone's office.</p> <p>16 Q. How did you provide the notification, what</p> <p>17 means did you use?</p> <p>18 A. I don't recall. It was probably E-mail or</p> <p>19 a fax, but I don't recall.</p> <p>20 MS. WILLIAMS: I'd like to mark this as</p> <p>21 Exhibit 11.</p> <p>22 (Davis Exhibit No. 11 was marked for</p> <p>23 identification.)</p> <p>24 BY MS. WILLIAMS:</p> <p>25 Q. Have you seen this document before?</p>                       |
| Page 71  | Page 73   |
| <p>1 Q. Do you know where you took the clients</p> <p>2 during this meeting?</p> <p>3 A. To -- I don't have a specific recollection</p> <p>4 about that specific meeting, but my general practice</p> <p>5 was to arrange for meetings with, say, three or four</p> <p>6 economists on Capitol Hill in the morning, and maybe</p> <p>7 at a lunch. And then with Administration economists</p> <p>8 in the afternoon, clients would typically fly home in</p> <p>9 the afternoon.</p> <p>10 Q. And who would the economists that you</p> <p>11 arranged the meeting with, who would they work for?</p> <p>12 A. They'd work for congressional committees</p> <p>13 or the Congressional Budget Office, for other</p> <p>14 government agencies.</p> <p>15 Q. Which agencies?</p> <p>16 A. Which agencies? You know, I don't recall</p> <p>17 specifically for that meeting, but typically it would</p> <p>18 be OMB Council of Economic Advisors, the Fed,</p> <p>19 Treasury, CBO, Joint Tax Committee, Senate Budget</p> <p>20 Committee, House Budget Committee, Joint Economic</p> <p>21 Committee.</p> <p>22 Q. How do you decide where to take the</p> <p>23 clients during the meeting?</p> <p>24 A. Whoever's available and whoever is the</p> <p>25 most knowledgeable person I can get to talk about how</p> | <p>1 A. Yes.</p> <p>2 Q. What is it?</p> <p>3 A. It's a meeting list for January 15th of</p> <p>4 '98.</p> <p>5 Q. And why was this meeting list prepared?</p> <p>6 A. So I would have the contact information</p> <p>7 for who we were meeting with.</p> <p>8 Q. Do you know if Mr. Nothern participated in</p> <p>9 this January 15th, '98 meeting?</p> <p>10 A. I know he participated in some meeting</p> <p>11 around, you know, this time. But I don't know if it</p> <p>12 was this specific meeting. It easily could have</p> <p>13 been.</p> <p>14 Q. Do you recognize the handwriting on the</p> <p>15 document?</p> <p>16 A. Some of it. The handwriting at the top is</p> <p>17 mine, but the other handwriting is not.</p> <p>18 Q. And I -- who from Treasury was scheduled</p> <p>19 to participate in this January 15th, '98 meeting?</p> <p>20 A. Allen Cohen, Jim Lister and Roger Anderson</p> <p>21 and John Karl Scholz -- oh, and furthermore, I guess</p> <p>22 David Wilcox, too. It is cut off on the side, I</p> <p>23 think it says TENT there, which would probably mean</p> <p>24 tentative.</p> <p>25 Q. That's your handwriting?</p> |

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| <p>1 A. Yeah, that looks like my handwriting on<br/>2 the side there.</p> <p>3 Q. Who would you have sent this document to?</p> <p>4 A. It's possible that I faxed this to clients<br/>5 who were going to attend.</p> <p>6 Q. Would you have sent this document to<br/>7 anyone who was not planning to attend?</p> <p>8 A. No, at least not that I recall. I have no<br/>9 recollection of sending this.</p> <p>10 Q. What was Mr. Cohen's job title at<br/>11 Treasury, if you recall?</p> <p>12 A. I think he was special assistant to the<br/>13 Secretary.</p> <p>14 Q. What about Mr. Lister?</p> <p>15 A. I don't recall. I think he was G-7 in<br/>16 international, but I really don't recall.</p> <p>17 Q. Roger Anderson?</p> <p>18 A. He was Assistant Secretary for -- geez, I<br/>19 forget. You know, financial management, it was -- he<br/>20 was the Assistant Secretary for debt manage -- it<br/>21 wasn't -- the title wasn't debt management, but<br/>22 that's what he was doing.</p> <p>23 Q. And what about Mr. Scholz?</p> <p>24 A. He's a tax economist who had been in the<br/>25 Office of Tax Analysis. In fact, I think he was</p>         | <p>1 A. Occasionally, once every few months.</p> <p>2 Q. Did you consider Mr. Anderson to be a<br/>3 friend of yours?</p> <p>4 A. It was a professional acquaintance, we<br/>5 didn't socialize together.</p> <p>6 Q. What about Mr. Scholz, how did you know<br/>7 him?</p> <p>8 A. He's a tax economist, he would<br/>9 occasionally speak to this professional group of tax<br/>10 economists that I co-founded.</p> <p>11 Q. How often would you speak to Mr. Scholz?</p> <p>12 A. Occasionally, not that often.</p> <p>13 Q. Where was the meeting held that you had at<br/>14 Treasury in January '98?</p> <p>15 A. I don't recall. It was probably in<br/>16 Roger's office, but -- in fact, I don't even recall<br/>17 whether it was one meeting, there might have been<br/>18 two.</p> <p>19 Q. Okay.</p> <p>20 A. In other words, sometimes I would move<br/>21 around within the building, visit with one group and<br/>22 then visit another.</p> <p>23 Q. Did you and the clients that you brought<br/>24 to Treasury have to go through any security to gain<br/>25 access to the building?</p> |
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| <p>1 director of the Office of Tax Analysis.</p> <p>2 Q. And Mr. Wilcox, what was his job title?</p> <p>3 A. I don't recall. He might have been<br/>4 Assistant Secretary for Economic Policy.</p> <p>5 Q. How did you determine who the people you<br/>6 were going to meet with on January 15th, '98?</p> <p>7 A. I mean, I -- I don't recall. Generally, I<br/>8 would be looking for people who could talk about<br/>9 economic policy making, and then the state of the<br/>10 economy.</p> <p>11 Q. To set up these meetings, did you contact<br/>12 the individuals on this list directly?</p> <p>13 A. Yes.</p> <p>14 Q. Had you previously met Mr. Cohen?</p> <p>15 A. He and I worked together on the Hill.</p> <p>16 Q. And how did you know Mr. Lister?</p> <p>17 A. It was probably a referral from Alan or<br/>18 someone else at Treasury, you know, I don't recall<br/>19 Lister at all. And that might have been the only<br/>20 time I met him.</p> <p>21 Q. And what about Mr. Anderson, how did you<br/>22 know him?</p> <p>23 A. I had met him on a number of occasions at<br/>24 Treasury.</p> <p>25 Q. How often did you and Mr. Anderson talk?</p> | <p>1 A. Yes.</p> <p>2 Q. And did you have a contact that you left<br/>3 the name with security, that you said you were going<br/>4 to see?</p> <p>5 MR. THEODOROU: Objection.</p> <p>6 THE WITNESS: I don't recall. It was -- I<br/>7 mean, someone obviously cleared us in. It could have<br/>8 been Roger, Roger's secretary, but I have no<br/>9 recollection of you know who cleared us in.</p> <p>10 BY MS. WILLIAMS:</p> <p>11 Q. Do you know the name of Mr. Anderson's<br/>12 secretary?</p> <p>13 A. I don't recall.</p> <p>14 Q. Does the name Patricia Walton ring a bell?</p> <p>15 A. No.</p> <p>16 Q. What about Anna Hart?</p> <p>17 A. No.</p> <p>18 Q. Do you know what you discussed during the<br/>19 meetings at Treasury that you had on January -- in<br/>20 January '98?</p> <p>21 A. I don't have any specific recollection.</p> <p>22 Q. Do you recall have any other meetings<br/>23 where Mr. Nothorn came to Washington?</p> <p>24 A. I remember he came once. I don't recall<br/>25 if -- it's possible there was another one. But I</p>  |

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| <p>1 don't recall. I mean, I remember him coming down for<br/>2 one for sure.<br/>3 Q. I'd like to have this marked as Exhibit<br/>4 12.<br/>5 (Davis Exhibit No. 12 was marked for<br/>6 identification.)<br/>7 BY MS. WILLIAMS:<br/>8 Q. Do you recognize this document, sir?<br/>9 A. It's a letter from me to Lee Sachs.<br/>10 Q. Is that your signature at the bottom?<br/>11 A. Yes, it is.<br/>12 Q. Did you prepare this document?<br/>13 A. Yes.<br/>14 Q. Is it a true and correct copy of the<br/>15 letter that you prepared to Mr. Sachs?<br/>16 A. Yes.<br/>17 Q. What is this letter regarding?<br/>18 A. It's about a meeting at Treasury on<br/>19 January 20th of 2000.<br/>20 Q. A meeting with whom?<br/>21 A. I would assume with Mr. Sachs. I don't<br/>22 recall who else was there.<br/>23 Q. I'd like to refer you to the second line,<br/>24 it says, attending will be and then there's a colon,<br/>25 do you see that?</p>  | <p>1 A. I forget his exact title. Something like<br/>2 Director of Office of Tax -- Office of Debt<br/>3 Management or something like that. He was the chief<br/>4 civil servant under the Assistant Secretary.<br/>5 Q. How did you know Mr. Malvey?<br/>6 A. I met him on a number occasions at<br/>7 Treasury.<br/>8 Q. Were you introduced by someone to<br/>9 Mr. Malvey?<br/>10 A. I don't recall how I met him.<br/>11 Q. Do you know when you first met Mr. Malvey,<br/>12 about the year?<br/>13 A. Some time in the mid-'90s, probably in '94<br/>14 or '95, I guess. It's hard to say.<br/>15 Q. How often would you speak to Mr. Malvey?<br/>16 A. Not that often, once every few months<br/>17 maybe.<br/>18 Q. Did you and Mr. Malvey have a personal<br/>19 relationship?<br/>20 A. No.<br/>21 Q. Your relationship was strictly<br/>22 professional?<br/>23 A. We had a professional relationship, there<br/>24 would be questions and I'd call up and ask him.<br/>25 Q. What kind of questions would you ask</p>  |
| Page 79   | Page 81   |
| <p>1 A. Yes, I do.<br/>2 Q. Who did you list would be attending the<br/>3 meeting?<br/>4 A. Ward McCarthy and Ray Stone from Stone &amp;<br/>5 McCarthy, Steve Nothorn and Larry Hathaway from --<br/>6 yeah, Larry Hathaway from Warburg Dillon Read.<br/>7 Q. Do you recall whether Mr. Nothorn attended<br/>8 a meeting at Treasury on, would have been January<br/>9 20th?<br/>10 A. I assume he attended this. This seems<br/>11 documented. I know he attended some meeting at<br/>12 Treasury that I was at, this was probably it.<br/>13 Q. Do you know who arranged the meeting at<br/>14 Treasury?<br/>15 A. I did.<br/>16 Q. Do you know if anyone besides Mr. Sachs<br/>17 from Treasury participated in the meeting?<br/>18 A. I don't have any specific recollection.<br/>19 There were almost certainly other people there, you<br/>20 don't just go in and meet with an Assistant Secretary<br/>21 without somebody else being there.<br/>22 Q. Do you know if Mr. Paul Malvey was in<br/>23 attendance?<br/>24 A. He probably was.<br/>25 Q. Who was Mr. Malvey?</p> | <p>1 Mr. Malvey?<br/>2 A. Well, you know -- I don't know, I'm trying<br/>3 to recall. When the quarterly refunding meetings<br/>4 would be, when they might be releasing any studies<br/>5 they were doing. Once in a while they do a special<br/>6 study.<br/>7 Q. How did you know Mr. Sachs?<br/>8 A. That was probably the only time I met with<br/>9 him, so I didn't really know him.<br/>10 Q. How was this meeting with Mr. Sachs<br/>11 arranged?<br/>12 MR. THEODOROU: Objection.<br/>13 THE WITNESS: I called up and asked to<br/>14 meet and then followed up with this letter.<br/>15 BY MS. WILLIAMS:<br/>16 Q. Did you call Mr. Sachs directly?<br/>17 A. No, and I put in -- I mean, almost<br/>18 certainly I had a written request that went in, you<br/>19 know, it was faxed or mailed to him, and then had to<br/>20 follow up. And then when I knew who the clients were<br/>21 who were going to go, then I sent this letter.<br/>22 MS. WILLIAMS: I'd like to mark this as<br/>23 Exhibit 13.<br/>24 (Davis Exhibit No. 13 was marked for<br/>25 identification.)</p> |

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|---|--|
| <p>1 MS. WILLIAMS: And I'd actually like to</p> <p>2 mark this as Exhibit 14.</p> <p>3 (Davis Exhibit No. 14 was marked for</p> <p>4 identification.)</p> <p>5 BY MS. WILLIAMS:</p> <p>6 Q. Do you recognize what's been marked as</p> <p>7 Exhibit 13?</p> <p>8 A. Yes.</p> <p>9 Q. What is it?</p> <p>10 A. It's an E-mail with a tentative schedule</p> <p>11 of meetings in Washington.</p> <p>12 Q. Who is it an E-mail from?</p> <p>13 A. From me to Larry Hathaway, Ward McCarthy,</p> <p>14 Steve Nothern and Ray Stone.</p> <p>15 Q. What's the date of this document?</p> <p>16 A. January 19th, 2000, 8:58 a.m.</p> <p>17 Q. Did you draft this document?</p> <p>18 A. Yes.</p> <p>19 Q. Do you recognize the handwriting on the</p> <p>20 document?</p> <p>21 A. No.</p> <p>22 Q. Why did you send this document?</p> <p>23 A. To notify my clients of the meeting</p> <p>24 schedule.</p> <p>25 Q. The meeting schedule for what day?</p>  | <p>1 Q. When you wrote this document, do you</p> <p>2 believe that the information contained in it was</p> <p>3 fresh in your mind?</p> <p>4 A. Sure.</p> <p>5 Q. Do you have any reason to doubt any of the</p> <p>6 accuracy of the information that's contained in the</p> <p>7 document?</p> <p>8 MR. THEODOROU: Objection.</p> <p>9 BY MS. WILLIAMS:</p> <p>10 Q. Besides the handwritten notes?</p> <p>11 A. Besides handwritten notes, it looks like</p> <p>12 something I prepared.</p> <p>13 Q. Exhibit 14, do you recognize this</p> <p>14 document?</p> <p>15 A. It's a printout from my contact manager,</p> <p>16 the contact information of the people, some of the</p> <p>17 people we were going to meet with that day.</p> <p>18 Q. When you say that date, what date are you</p> <p>19 referring to?</p> <p>20 A. January 20th -- well, it's interesting</p> <p>21 there it's cut off. There's no date on this, so I</p> <p>22 can't be sure of that, but it does list some of the</p> <p>23 same people that were on the previous exhibit.</p> <p>24 Q. Did you create the document except for the</p> <p>25 handwritten notes?</p> |
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| <p>1 A. The following day, January 20th.</p> <p>2 Q. And besides Mr. Sachs, does this document</p> <p>3 help refresh your recollection as to other people you</p> <p>4 met with on January 20th?</p> <p>5 A. Yeah, I mean, it's got a list of other</p> <p>6 people we met with.</p> <p>7 MR. STANCIL: To be clear, she's asking</p> <p>8 you if based on this document you have an independent</p> <p>9 recollection or just reading the document --</p> <p>10 THE WITNESS: Oh, oh.</p> <p>11 MR. STANCIL: I want you to be real clear</p> <p>12 about what you remember.</p> <p>13 THE WITNESS: Yeah.</p> <p>14 MR. STANCIL: And what the document says.</p> <p>15 Maybe the document changes what you remember, maybe</p> <p>16 it doesn't.</p> <p>17 THE WITNESS: I have a specific</p> <p>18 recollection of a meeting with Vince Reinhardt at the</p> <p>19 Fed. I recall a meeting at Treasury some, but I</p> <p>20 don't remember Lee Sachs. And I -- you know, the</p> <p>21 rest of it, I don't really recall.</p> <p>22 BY MS. WILLIAMS:</p> <p>23 Q. Did you draft this document on January</p> <p>24 19th, 2000?</p> <p>25 A. Yes, I must have, it certainly --</p> | <p>1 A. It's printed out from my contact manager</p> <p>2 so I must have.</p> <p>3 Q. Do you recognize the handwriting on the</p> <p>4 document?</p> <p>5 A. No.</p> <p>6 Q. Do you know if you sent this document to</p> <p>7 anyone?</p> <p>8 A. I -- I don't recall.</p> <p>9 Q. Was it your practice to send a print out</p> <p>10 from your contact manager to people?</p> <p>11 MR. THEODOROU: Objection.</p> <p>12 THE WITNESS: I probably did. I don't</p> <p>13 have any specific recollection.</p> <p>14 MS. WILLIAMS: Okay.</p> <p>15 BY MS. WILLIAMS:</p> <p>16 Q. Did you ever discuss with any clients how</p> <p>17 you knew individuals that you were going to be</p> <p>18 meeting with in Washington?</p> <p>19 A. Sure.</p> <p>20 MR. THEODOROU: Objection.</p> <p>21 BY MS. WILLIAMS:</p> <p>22 Q. And what would you tell your clients? Or</p> <p>23 specifically what did you tell the clients regarding</p> <p>24 this January 20th meeting about people that you were</p> <p>25 going to be meeting with?</p>  |

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| <p style="text-align: right;">Page 86</p> <p>1 A. Sometimes -- I don't have any specific<br/>2 recollection of it, but I -- standard practice was to<br/>3 discuss their backgrounds.<br/>4 Q. Do you know if you informed the clients<br/>5 how you knew Mr. Malvey?<br/>6 A. No, I really don't recall. I told them I<br/>7 knew him, you know.<br/>8 Q. Do you have any recollection of what you<br/>9 discussed with Mr. Malvey during the January 20th<br/>10 meeting?<br/>11 A. I recall discussing the economic outlook,<br/>12 the -- what effect that might have on the deficit and<br/>13 Treasury borrowing requirements. But other than<br/>14 that, I don't have any specific recollections.<br/>15 Q. Do you know if there was any discussion<br/>16 about Treasury's quarterly refunding conference?<br/>17 MR. THEODOROU: Objection.<br/>18 THE WITNESS: I mean, I don't -- I don't<br/>19 recall any discussion like that.<br/>20 BY MS. WILLIAMS:<br/>21 Q. Do you recall how long the meeting with<br/>22 Mr. Malvey lasted?<br/>23 A. No. It wasn't just him, there was --<br/>24 there was a, you know, a group from Treasury, I<br/>25 forget who was in it, but, you know, he was certainly</p> | <p style="text-align: right;">Page 88</p> <p>1 A. Yeah, I recall she was the main contact<br/>2 for me to attend quarterly refunding meetings, or to<br/>3 try and get documents that had been publicly released<br/>4 by the Treasury regarding debt management.<br/>5 Q. Do you know what Ms. Tyler's job title was<br/>6 at Treasury?<br/>7 A. No, I don't know, no.<br/>8 Q. Do you know who she worked for?<br/>9 A. Not really sure whether she worked for<br/>10 Malvey or whether she worked for the Assistant<br/>11 Secretary, I don't recall.<br/>12 Q. How did Ms. Tyler become the main contact<br/>13 for you to attend quarterly refunding meetings?<br/>14 A. I -- I don't -- I don't really recall.<br/>15 Q. Do you know how you met Ms. Tyler?<br/>16 A. I meet her over the phone some time in say<br/>17 '94 maybe. I'm unclear as to the year. At the<br/>18 quarterly refunding meetings, they would put out<br/>19 documents and I would contact her to get them. They<br/>20 would release them and I would go over and pick them<br/>21 up, fax them over to clients or fax select parts of<br/>22 them to clients.<br/>23 Q. I'm trying to find out how you came to<br/>24 contact Ms. Tyler to gain access to the quarterly<br/>25 refunding conferences.</p> |
| <p style="text-align: right;">Page 87</p> <p>1 there.<br/>2 Q. Do you know about approximately how many<br/>3 people were in the group from Treasury?<br/>4 A. Two or three.<br/>5 Q. Do you know if Mr. Nothorn said anything<br/>6 during the meeting?<br/>7 A. I -- I don't recall.<br/>8 Q. Did you know Jill Ousley?<br/>9 A. Yes, I'd met her over at Treasury.<br/>10 Q. And when did you meet Ms. Ousley?<br/>11 A. Sometime in the mid-'90s.<br/>12 Q. How did you meet Ms. Ousley?<br/>13 A. Probably at quarterly refunding meetings.<br/>14 Q. And what was Ms. Ousley's title at<br/>15 Treasury?<br/>16 A. I don't recall her title, she was under<br/>17 Mr. Malvey.<br/>18 Q. How often would you and Ms. Ousley<br/>19 communicate?<br/>20 A. Rarely.<br/>21 Q. When you say rarely, approximately how<br/>22 many times a year?<br/>23 A. I don't recall. Basically, I would call<br/>24 her if I couldn't get through to Malvey.<br/>25 Q. Did you know Lulu Tyler?</p>   | <p style="text-align: right;">Page 89</p> <p>1 MR. STANCIL: Is there -- what's the<br/>2 question?<br/>3 BY MS. WILLIAMS:<br/>4 Q. How did you contact Ms. Tyler to gain<br/>5 access to the quarterly refunding conference?<br/>6 MR. THEODOROU: Objection.<br/>7 MR. STANCIL: He answered that he didn't<br/>8 recall.<br/>9 MS. WILLIAMS: Right.<br/>10 BY MS. WILLIAMS:<br/>11 Q. And I'm asking --<br/>12 MR. STANCIL: If you're asking a different<br/>13 question, that's fine, I want to make sure we're all<br/>14 answering the same question.<br/>15 BY MS. WILLIAMS:<br/>16 Q. Well, how did you come to contact Ms.<br/>17 Tyler to obtain these documents that you were<br/>18 referring to?<br/>19 MR. THEODOROU: Objection.<br/>20 THE WITNESS: Well, after quarterly<br/>21 refunding meetings, it was standard practice to have<br/>22 a stack of the documents available at the messenger<br/>23 window, the 15th Street Treasury entrance to the<br/>24 Treasury. After Ward McCarthy became a client, he<br/>25 was very interested in getting those documents and so</p>  |

23 (Pages 86 to 89)

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|--|---|
| <p>1 starting in, I don't know, I can't remember when Ward<br/>2 became a client, but sometime in '93 or '94, I<br/>3 started going down to the Treasury to pick up those<br/>4 documents, or send my assistant to pick them up.<br/>5 Sometimes Treasury would not have the<br/>6 documents there, even though they'd been released.<br/>7 And so then I would call asking for the documents and<br/>8 I would usually be referred to Lulu.<br/>9 Q. How often would you speak to Ms. Tyler?<br/>10 A. You know, basically whenever I went to the<br/>11 window and the documents weren't there, I'd call her<br/>12 up. So it wasn't that often. If the documents were<br/>13 there, I'd just get them.<br/>14 Q. You said she was also a contact, though,<br/>15 for you to attend the quarterly refunding<br/>16 conferences?<br/>17 A. Right.<br/>18 Q. Would you have conversations with her --<br/>19 A. That was later.<br/>20 Q. When did she become a contact, then, for<br/>21 you to attend the conferences?<br/>22 A. Boy, I don't recall when I started<br/>23 attending quarterly refunding meetings. It was some<br/>24 time in the mid-'90s and she would be the person that<br/>25 I would call up to get cleared into Treasury.</p> | <p>1 conferences a couple of times. What were the<br/>2 quarterly refunding conferences?<br/>3 A. They were a series of meetings to -- well,<br/>4 Tuesday, on the first Tuesdays of like February, May,<br/>5 August and November, they would have a meeting of<br/>6 their advisory committee. And they would -- there<br/>7 would be a briefing on the economy, and that would<br/>8 end and then some of the charts and data about the<br/>9 economy would be released at that meeting.<br/>10 And then the next day on Wednesday, there<br/>11 would be another meeting, and Treasury would put out<br/>12 its press release identifying their debt schedule for<br/>13 the next quarter, and also another set of additional<br/>14 charts and data would be released also. And also the<br/>15 minutes of the advisory committee's meeting.<br/>16 Q. You mentioned a meeting on Tuesdays and<br/>17 then there was a meeting on Wednesday.<br/>18 A. Right.<br/>19 Q. Were both of those meetings collectively<br/>20 to be considered the quarterly refunding conference?<br/>21 A. Right. There are other parts to it. The<br/>22 advisory committee would meet elsewhere, and there<br/>23 were other parts to it, but those were the two that I<br/>24 would attend. And the press, you know, the press<br/>25 would generally attend.</p> |
| Page 91  | Page 93   |
| <p>1 Q. You said that you would call up Treasury<br/>2 and someone would refer you to Ms. Tyler when you<br/>3 were looking for the documents?<br/>4 A. Right.<br/>5 Q. Who would you first initially call?<br/>6 A. I don't have a specific recollection, but<br/>7 it was probably Malvey.<br/>8 Q. And why would you call Mr. Malvey?<br/>9 A. Because he was the person who produced the<br/>10 documents.<br/>11 Q. Would he create the documents?<br/>12 A. Well, there were other people in Treasury<br/>13 that put them together, but he was the person in<br/>14 charge of those documents.<br/>15 Q. Do you know if Ms. Tyler worked for<br/>16 Mr. Malvey?<br/>17 A. I think so, but I don't really recall.<br/>18 MS. WILLIAMS: I was wondering if we went<br/>19 until noon, we could break for lunch. That's about<br/>20 ten more minutes. Is that all right?<br/>21 MR. STANCIL: That's fine.<br/>22 MS. WILLIAMS: Is that okay? So about ten<br/>23 more minutes.<br/>24 BY MS. WILLIAMS:<br/>25 Q. We've mentioned quarterly refunding</p>  | <p>1 Q. So you would attend the Tuesday meetings<br/>2 and then you would attend the Wednesday meetings?<br/>3 A. Right.<br/>4 Q. Do you know what time those meetings were<br/>5 usually held?<br/>6 A. Yeah, they start at 9 o'clock.<br/>7 Q. How did you come to attend these quarterly<br/>8 refunding conferences?<br/>9 A. Some time in '94 or '95, Treasury was<br/>10 unable to produce these charts that had already been<br/>11 released publicly. And, you know, I'd be calling<br/>12 Lulu to get them and I'd say, Lulu, I know they were<br/>13 passed out, I was down at the window right on time<br/>14 and they didn't get them. How can I get them?<br/>15 And then the answer would be, well, gee,<br/>16 we passed them all out, I don't have any more copies.<br/>17 I'd say I need to get some, how can I get them? And<br/>18 sometimes it took days to get somebody to give me a<br/>19 copy. And so at some point, she suggested that I ask<br/>20 the Assistant Secretary for authorization to attend<br/>21 the meetings so I could get the charts.<br/>22 Q. Who was the Assistant Secretary?<br/>23 A. Roger Anderson.<br/>24 Q. Did you contact Mr. Anderson?<br/>25 A. Yes, I did.</p>  |

24 (Pages 90 to 93)

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| <p>1 Q. And would this have been around '94, '95?</p> <p>2 A. I guess. That's so long ago, I can't be</p> <p>3 certain about the date.</p> <p>4 Q. But it was before the year 2000?</p> <p>5 A. Oh, yeah, for sure.</p> <p>6 Q. How did you contact Mr. Anderson?</p> <p>7 A. I seem to recall a telephone -- a short</p> <p>8 telephone conversation and a follow-up letter.</p> <p>9 Q. What was discussed during the</p> <p>10 conversation?</p> <p>11 A. Same thing as in the letter, you know,</p> <p>12 I've been having difficulty getting these documents</p> <p>13 after they have been publicly released, would it be</p> <p>14 possible for me to get authorization to attend the</p> <p>15 meetings to get them -- get them there.</p> <p>16 Q. Were you -- you say you had a conversation</p> <p>17 and then you sent a letter?</p> <p>18 A. Right.</p> <p>19 Q. The letter was basically the same --</p> <p>20 A. The letter that I attend the meetings.</p> <p>21 MR. STANCIL: Make sure you let her finish</p> <p>22 her question before you answer, because she's got to</p> <p>23 take it all down and he's going to object.</p> <p>24 THE WITNESS: I understand.</p> <p>25 BY MS. WILLIAMS:</p> | <p>1 an agreement was signed?</p> <p>2 A. Yes.</p> <p>3 Q. Who was the agreement between?</p> <p>4 A. It was between me and the Treasury</p> <p>5 Department.</p> <p>6 Q. Did you sign the agreement?</p> <p>7 A. Yes.</p> <p>8 Q. Did someone from Treasury sign the</p> <p>9 agreement?</p> <p>10 A. Yes, I -- I remember doing it in Roger's</p> <p>11 office. I assume he signed it, but --</p> <p>12 Q. And who drafted the agreement?</p> <p>13 A. Treasury did.</p> <p>14 MR. THEODOROU: Objection.</p> <p>15 BY MS. WILLIAMS:</p> <p>16 Q. So you did not prepare the agreement?</p> <p>17 A. No.</p> <p>18 Q. Did you retain a copy of the agreement?</p> <p>19 A. Yes.</p> <p>20 Q. Do you still have a copy of the agreement?</p> <p>21 A. No.</p> <p>22 Q. What happened to it?</p> <p>23 A. I pitched it in August of 2001.</p> <p>24 Q. Why did you throw it away?</p> <p>25 A. At that point, I had violated it and I</p>   |
| Page 95  | Page 97  |
| <p>1 Q. Were you ever given authorization to</p> <p>2 attend the meetings?</p> <p>3 A. Yes.</p> <p>4 Q. By whom?</p> <p>5 A. By Roger Anderson.</p> <p>6 Q. And how did Mr. Anderson communicate to</p> <p>7 you that you had been given authorization to attend</p> <p>8 the quarterly refunding meetings?</p> <p>9 MR. THEODOROU: Objection.</p> <p>10 THE WITNESS: He called me up and said,</p> <p>11 you can attend, if you swear to honor the embargo and</p> <p>12 sign the confidentiality agreement.</p> <p>13 BY MS. WILLIAMS:</p> <p>14 Q. You say to honor the embargo, what do you</p> <p>15 mean by that?</p> <p>16 A. To not release the information that was</p> <p>17 passed out at the meetings until the embargo time.</p> <p>18 Q. What was an embargo?</p> <p>19 A. It is a period of time after the</p> <p>20 information is passed out until it can be released.</p> <p>21 Q. And then you said -- did you agree to</p> <p>22 honor the embargo?</p> <p>23 A. Yes.</p> <p>24 Q. You also mentioned signing a</p> <p>25 confidentiality agreement. Could you tell me whether</p>   | <p>1 threw it away.</p> <p>2 Q. Do you know if Mr. Anderson retained a</p> <p>3 copy of the agreement?</p> <p>4 A. When I walked out of his office, it was</p> <p>5 sitting on his desk.</p> <p>6 Q. Did you sign one document or did you sign</p> <p>7 multiple documents?</p> <p>8 A. It was one document.</p> <p>9 Q. Did you have that document photocopied?</p> <p>10 A. I was given a copy, which I pitched in</p> <p>11 August 2001.</p> <p>12 Q. Was anyone else given a copy of that</p> <p>13 document that you know of?</p> <p>14 A. No, not that I'm aware of.</p> <p>15 Q. Do you know approximately how long after</p> <p>16 you sent the letter to Mr. Anderson asking for</p> <p>17 authorization to attend the conferences as to when</p> <p>18 you met with him in his office to sign this</p> <p>19 confidentiality agreement?</p> <p>20 A. It was within a week, a few days later.</p> <p>21 Q. Did you keep a copy of the letter you sent</p> <p>22 to Mr. Anderson asking for authorization?</p> <p>23 A. I really don't recall. It must have been</p> <p>24 on my word processor, but hard drives die and I don't</p> <p>25 recall seeing it.</p> |

25 (Pages 94 to 97)

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|--|--|
| <p>1 Q. Before you had these conversations and</p> <p>2 sent the letters to Mr. Anderson, had you ever</p> <p>3 attended a quarterly refunding conference?</p> <p>4 A. No.</p> <p>5 Q. Just before we go to lunch, let me ask</p> <p>6 you, you mentioned Mr. McCarthy was interested in</p> <p>7 documents for the conference.</p> <p>8 A. Um-hum.</p> <p>9 Q. Did you start getting the documents that</p> <p>10 you mentioned from the Tuesday conference as a result</p> <p>11 of Mr. McCarthy's requesting those?</p> <p>12 A. Yes.</p> <p>13 Q. Did any other clients express interest in</p> <p>14 documents from the quarterly refunding conference?</p> <p>15 A. Yeah, there were one or two. I just</p> <p>16 started broadcast faxing them out to all of my</p> <p>17 clients.</p> <p>18 Q. When you received them, you just started</p> <p>19 to send them?</p> <p>20 A. Yeah.</p> <p>21 Q. How would you send them to your clients?</p> <p>22 A. I just said I would start -- when the</p> <p>23 documents had been publicly released, I'd take them,</p> <p>24 I would go back to my office and broadcast fax</p> <p>25 portions of them. I didn't broadcast fax everything,</p>                           | <p>1 number 2 in the video deposition of Mr. Peter Davis.</p> <p>2 Off the record at 12:04:01 p.m. on April 19, 2006.</p> <p>3 (Whereupon, at 12:04 p.m., the deposition</p> <p>4 in the above-entitled matter was recessed, to</p> <p>5 reconvene at 12:45 p.m., this same day.)</p> <p>6</p> <p>7</p> <p>8</p> <p>9</p> <p>10</p> <p>11</p> <p>12</p> <p>13</p> <p>14</p> <p>15</p> <p>16</p> <p>17</p> <p>18</p> <p>19</p> <p>20</p> <p>21</p> <p>22</p> <p>23</p> <p>24</p> <p>25</p>  |
| Page 99  | Page 101   |
| <p>1 but there were certainly tables they cared about.</p> <p>2 Q. Initially you would send them via fax?</p> <p>3 A. Right.</p> <p>4 Q. Did you ever E-mail those documents?</p> <p>5 A. No, because they -- it was just easier to</p> <p>6 broadcast fax them. At some point in the late '90s,</p> <p>7 Treasury started posting them on their website.</p> <p>8 Q. I just have two more questions before we</p> <p>9 go to lunch. Besides agreeing to honor the embargo,</p> <p>10 was there anything else that you agreed to as a</p> <p>11 condition to gain authorization to the quarterly</p> <p>12 refunding conference?</p> <p>13 A. No.</p> <p>14 Q. Did you ever mention -- did you express to</p> <p>15 Mr. Anderson why you wanted to attend the</p> <p>16 conferences?</p> <p>17 A. I just told him I was having trouble</p> <p>18 getting the documents, and I was told that if I</p> <p>19 attended the meetings, I could get the documents.</p> <p>20 There were certain tables of data that were of</p> <p>21 interest, and I just wanted to find a way to get</p> <p>22 those.</p> <p>23 MS. WILLIAMS: I'd like to break for</p> <p>24 lunch.</p> <p>25 THE VIDEOGRAPHER: This is the end of tape</p> | <p>1 AFTERNOON SESSION</p> <p>2 (1:02 p.m.)</p> <p>3 Whereupon,</p> <p>4 PETER DAVIS, JR.,</p> <p>5 the witness testifying at the time of recess, having</p> <p>6 been previously duly sworn, was further examined and</p> <p>7 testified further as follows:</p> <p>8 EXAMINATION BY COUNSEL FOR PLAINTIFF (RESUMED)</p> <p>9 THE VIDEOGRAPHER: This is the beginning</p> <p>10 of tape number 3 in the videotape deposition of</p> <p>11 Mr. Peter Davis. On the record at 1:02:56 p.m. on</p> <p>12 April 19th, 2006.</p> <p>13 BY MS. WILLIAMS:</p> <p>14 Q. Mr. Davis, before lunch, we were talking</p> <p>15 about a meeting that you had with Roger Anderson in</p> <p>16 which you discussed gaining access to the quarterly</p> <p>17 refunding conferences at Treasury. Was anyone else</p> <p>18 present at the meeting besides you and Mr. Anderson?</p> <p>19 A. One of his assistants.</p> <p>20 Q. Was it a male or female?</p> <p>21 A. It was a female.</p> <p>22 Q. And you don't recall the assistant's name?</p> <p>23 A. She was the one who brought in the</p> <p>24 document.</p> <p>25 Q. Do you know what she looked like?</p> |

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|---|---|
| <p>1 A. I really don't recall.</p> <p>2 Q. Did Mr. Anderson know that you worked for</p> <p>3 Davis Capital when you met with him --</p> <p>4 A. Yes.</p> <p>5 Q. -- to discuss that? Did he know that you</p> <p>6 were not a member of the press?</p> <p>7 A. Yes.</p> <p>8 Q. Did you all have any discussions regarding</p> <p>9 the fact that you wanted to gain access to the</p> <p>10 conference, but you were not a member of the press?</p> <p>11 A. Yeah.</p> <p>12 Q. What did you discuss?</p> <p>13 MR. THEODOROU: Objection, go ahead.</p> <p>14 BY MS. WILLIAMS:</p> <p>15 Q. You can answer.</p> <p>16 MR. STANCIL: If you recall.</p> <p>17 THE WITNESS: I mean, I don't recall it so</p> <p>18 much being a discussion. He told me that, you know,</p> <p>19 I could attend these meetings if I signed this</p> <p>20 confidentiality agreement. And I said, fine.</p> <p>21 BY MS. WILLIAMS:</p> <p>22 Q. So it did not appear to you that</p> <p>23 Mr. Anderson had a problem with you attending the</p> <p>24 meetings, even though you were not a member of the</p> <p>25 press?</p>  | <p>1 do to gain clearance into Treasury?</p> <p>2 A. No. I mean, I already knew it.</p> <p>3 Q. What if any discussions did you have with</p> <p>4 Ms. Tyler about your attending the quarterly</p> <p>5 refunding conferences or having been given permission</p> <p>6 to attend by Mr. Anderson?</p> <p>7 A. I just made a habit of calling her on</p> <p>8 Monday to make sure I was cleared in. And she'd say</p> <p>9 yeah -- because you had to -- she had to put my name</p> <p>10 into the computer and my birth date and my Social</p> <p>11 Security number each time. And so I'd call her and</p> <p>12 she'd enter it into the Secret Service computer and</p> <p>13 I'd show up and get a badge.</p> <p>14 Q. Did you tell Ms. Tyler that Mr. Anderson</p> <p>15 had given you permission to attend the quarterly</p> <p>16 refunding conferences?</p> <p>17 MR. THEODOROU: Objection.</p> <p>18 THE WITNESS: It didn't work that way.</p> <p>19 She was the one who said, oh, gee, if you could go to</p> <p>20 the meetings you could get the charts. And then</p> <p>21 Anderson approved it. You know, she knew.</p> <p>22 BY MS. WILLIAMS:</p> <p>23 Q. I'm trying to find out how she came to</p> <p>24 find out that Mr. Anderson had approved it, because</p> <p>25 you --</p>   |
| Page 103  | Page 105  |
| <p>1 MR. THEODOROU: Objection.</p> <p>2 BY MS. WILLIAMS:</p> <p>3 Q. You can answer.</p> <p>4 A. I mean, obviously he let me into the</p> <p>5 meeting so --</p> <p>6 Q. After you had this conversation with</p> <p>7 Mr. Anderson and signed the confidentiality</p> <p>8 agreement, how did you go about gaining clearance</p> <p>9 into Treasury to attend the quarterly refunding</p> <p>10 conferences?</p> <p>11 A. I would call up Lulu and make sure I was</p> <p>12 cleared in. And I'd show up downstairs on the</p> <p>13 appointed days and my name would be on the list and</p> <p>14 I'd get a badge and I'd go up to the third floor.</p> <p>15 Q. Did Mr. Anderson have any conversations</p> <p>16 with you about what you should do to gain access --</p> <p>17 gain clearance into Treasury to attain -- to attend</p> <p>18 the quarterly refunding conferences?</p> <p>19 MR. THEODOROU: Objection.</p> <p>20 THE WITNESS: No. I mean, I had gone into</p> <p>21 Treasury for lots of meetings for years, you know,</p> <p>22 for tax policy. So I knew the procedure for getting</p> <p>23 into Treasury.</p> <p>24 BY MS. WILLIAMS:</p> <p>25 Q. So Mr. Anderson did not tell you what to</p> | <p>1 A. How am I supposed to know?</p> <p>2 Q. You said she wasn't in attendance at the</p> <p>3 meeting that you had with Mr. Anderson?</p> <p>4 A. I didn't say that.</p> <p>5 Q. I asked who else was present at the</p> <p>6 meeting, and you said Mr. Anderson's assistant. Was</p> <p>7 Ms. Tyler present?</p> <p>8 A. It's possible it was her. I just don't</p> <p>9 know. She was a voice on the other end of the phone,</p> <p>10 I'm not sure I met her maybe twice and that was a</p> <p>11 long time ago.</p> <p>12 Q. Was it your understanding that Ms. Tyler</p> <p>13 was one of Mr. Anderson's assistants?</p> <p>14 A. She could have been or she could have been</p> <p>15 Mr. Malvey's, that's a matter of record at Treasury.</p> <p>16 I just -- all I know is that she was the person that</p> <p>17 I would call for clearance to attend the quarterly</p> <p>18 refunding meetings.</p> <p>19 Q. Besides Ms. Tyler, did you ever -- and I</p> <p>20 might have asked this before, but I've forgotten --</p> <p>21 did you ever call anyone else to gain clearance into</p> <p>22 Treasury?</p> <p>23 A. There was one meeting when I showed up and</p> <p>24 somehow, even though she said I was on the list, I</p> <p>25 wasn't. And I called upstairs and Paul Malvey</p> |

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|---|--|
| <p>1 actually came down and cleared me in himself on the</p> <p>2 spot.</p> <p>3 Q. Besides that time when Mr. Malvey came</p> <p>4 down, do you recall anyone else clearing you into</p> <p>5 Treasury?</p> <p>6 A. Well, I mean, there were times when like</p> <p>7 she would be out or something and I'd call her number</p> <p>8 and she wouldn't be in, and somebody else would pick</p> <p>9 up and I wouldn't even know who I was talking to.</p> <p>10 Q. I'm sorry.</p> <p>11 A. I would just explain that I'm just calling</p> <p>12 to get cleared into the meeting. And you know,</p> <p>13 whoever it was would take care of it.</p> <p>14 Q. Did you ever -- were you ever denied</p> <p>15 access to the quarterly refunding conference after</p> <p>16 you had gotten permission from Mr. Anderson to</p> <p>17 attend?</p> <p>18 A. No.</p> <p>19 Q. Do you know Mr. John Merchantson?</p> <p>20 A. I don't have a clear recollection of him</p> <p>21 at all. The name sounds a little familiar, but I</p> <p>22 don't have any recollection.</p> <p>23 Q. And just a variation of my previous</p> <p>24 question. You said you were never denied access.</p> <p>25 Were you ever asked to leave a quarterly refunding</p> | <p>1 instead of Ms. Tyler?</p> <p>2 A. I don't know. Paul was the person who --</p> <p>3 I don't know. It didn't occur to me to send it to</p> <p>4 her.</p> <p>5 MR. STANCIL: To be clear, do you remember</p> <p>6 one way or the other or are you -- or do you know?</p> <p>7 THE WITNESS: No, I don't recall why I</p> <p>8 sent to him.</p> <p>9 BY MS. WILLIAMS:</p> <p>10 Q. You don't recall why you sent it to</p> <p>11 Mr. Malvey and not to Ms. Tyler?</p> <p>12 A. Right or Mr. Anderson, I just don't recall</p> <p>13 why.</p> <p>14 Q. Did you ever contact Ms. Ousley to gain</p> <p>15 access -- to gain clearance to the Treasury?</p> <p>16 A. It's possible, but I don't recall any -- I</p> <p>17 don't recall ever doing that.</p> <p>18 Q. Where in the Treasury building were the</p> <p>19 quarterly refunding conferences held, specifically</p> <p>20 the Wednesday meeting?</p> <p>21 A. Well, they are all held in the same place.</p> <p>22 I'm trying to remember whether it was the third floor</p> <p>23 or the fourth floor. I remember the room number was</p> <p>24 4323, and I -- what I can't remember is -- I think</p> <p>25 the second number is the floor number. So it was the</p> |
| Page 107  | Page 109   |
| <p>1 conference?</p> <p>2 A. No.</p> <p>3 MS. WILLIAMS: I'd like to mark this as</p> <p>4 Exhibit 15.</p> <p>5 (Davis Exhibit No. 15 was marked for</p> <p>6 identification.)</p> <p>7 BY MS. WILLIAMS:</p> <p>8 Q. Do you recognize this document, sir?</p> <p>9 A. Yes.</p> <p>10 Q. What is it?</p> <p>11 A. It's a request to Paul Malvey to allow my</p> <p>12 assistant, Allyson Sullivan, to attend the February</p> <p>13 2000 quarterly refunding in my absence.</p> <p>14 Q. Who drafted the document?</p> <p>15 A. I did.</p> <p>16 Q. Is this your signature at the bottom?</p> <p>17 A. Yes.</p> <p>18 Q. Why did you send this document to</p> <p>19 Mr. Malvey?</p> <p>20 A. Because I needed to get the charts to my</p> <p>21 clients as usual and I was going to be out of town.</p> <p>22 Q. Did Mr. Malvey respond to this letter?</p> <p>23 A. I don't recall that he did, I don't think</p> <p>24 he did. But Allyson was cleared in.</p> <p>25 Q. Why did you send this to Mr. Malvey</p>  | <p>1 main Treasury conference room opposite the</p> <p>2 Secretary's office for these meetings.</p> <p>3 Q. How big is the room?</p> <p>4 A. It's got a large conference table, it had</p> <p>5 seating around it for maybe 20 people. There was</p> <p>6 seating around the edges for maybe another dozen.</p> <p>7 Q. Did you usually sit during the meeting?</p> <p>8 A. Yes.</p> <p>9 Q. Where did you sit?</p> <p>10 A. It varied. Sometimes in the back,</p> <p>11 sometimes right at the table.</p> <p>12 Q. Did you ever ask any questions during the</p> <p>13 meetings?</p> <p>14 A. Not initially in the early meetings -- for</p> <p>15 years I would just attend, get the documents and</p> <p>16 leave. And some time in the later '90s, I would</p> <p>17 start asking a question now and then, yeah.</p> <p>18 Q. Was there a time set aside for asking</p> <p>19 questions?</p> <p>20 A. Yes. I mean, both on Tuesday and on</p> <p>21 Wednesday, once the Treasury officials made standard</p> <p>22 presentations, there would be a time for questions.</p> <p>23 Q. Were these meetings open to the public?</p> <p>24 A. No.</p> <p>25 Q. Who could attend the meetings?</p>                               |

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|--|---|
| <p>1 A. Basically --</p> <p>2 MR. THEODOROU: Objection.</p> <p>3 MR. STANCIL:</p> <p>4 BY MS. WILLIAMS:</p> <p>5 Q. You can answer.</p> <p>6 MR. STANCIL: If you know.</p> <p>7 THE WITNESS: It was the press and me.</p> <p>8 BY MS. WILLIAMS:</p> <p>9 Q. Approximately how many people on average</p> <p>10 attended the meeting?</p> <p>11 A. It varied a lot. Sometimes there would</p> <p>12 only be a few of the Treasury beat reporters there,</p> <p>13 sometimes there would be more.</p> <p>14 Q. When you say a few, could you give me a</p> <p>15 ballpark number there?</p> <p>16 A. There was always going to be about</p> <p>17 anywhere from say 6 to 10 Treasury people there. And</p> <p>18 there was usually at least as many reporters.</p> <p>19 Sometimes I think on a few occasions there were only</p> <p>20 five or six reporters, but on other occasions, like</p> <p>21 especially October 31st, 2001, there was like maybe</p> <p>22 40 or 50 reporters and far more Treasury officials.</p> <p>23 Q. About how many Treasury officials would</p> <p>24 you estimate were present at the October 31st, 2001</p> <p>25 conference?</p>   | <p>1 specifically recall her there, it was a very crowded</p> <p>2 meeting.</p> <p>3 Q. Were the doors to the Treasury quarterly</p> <p>4 refunding conferences usually closed?</p> <p>5 A. It varied. I mean, sometimes they were,</p> <p>6 and sometimes they weren't.</p> <p>7 Q. Do you know why they were sometimes no</p> <p>8 closed?</p> <p>9 A. No.</p> <p>10 MR. THEODOROU: Objection.</p> <p>11 BY MS. WILLIAMS:</p> <p>12 Q. Do you recall whether they were open or</p> <p>13 closed on October 31st, 2001?</p> <p>14 A. They were closed.</p> <p>15 Q. Did you stay for the entire October 31st,</p> <p>16 2001 conference on that Wednesday?</p> <p>17 A. Yes.</p> <p>18 Q. Did you usually stay for the entire</p> <p>19 Wednesday conference?</p> <p>20 A. Yes.</p> <p>21 Q. Do you know if Ms. Ousley still works for</p> <p>22 the Treasury Department?</p> <p>23 A. I have no idea. She was fairly close to</p> <p>24 retirement age back then, but I have no idea.</p> <p>25 Q. How far in advance of the quarterly</p>  |
| Page 111   | Page 113  |
| <p>1 A. Well, that was Peter Fisher's first</p> <p>2 announcement when he became undersecretary. And</p> <p>3 Malvey was there, Ousley was there, there were at</p> <p>4 least another dozen Treasury officials of various --</p> <p>5 you know, and staff. And you know, there were</p> <p>6 communications people just set up, you know, like,</p> <p>7 you know, communications. And there were people, you</p> <p>8 know, clerks handling the documents and so on.</p> <p>9 Q. Did you speak to Mr. Malvey at the October</p> <p>10 31st, 2001 meeting?</p> <p>11 A. Yes.</p> <p>12 Q. Do you recall what you discussed?</p> <p>13 A. I was sitting in the front row and he came</p> <p>14 in with Fisher. And before the meeting started and</p> <p>15 this of course was on the Wednesday, on the final</p> <p>16 announcement, October 31st. And there wasn't --</p> <p>17 there weren't enough chairs for him and for Fisher</p> <p>18 and for one other Treasury official. And so I</p> <p>19 forget, I said, Paul, do you want to take my chair</p> <p>20 and we did some discussion about the chairs.</p> <p>21 Q. Did you have any other discussions with</p> <p>22 Mr. Malvey?</p> <p>23 A. No.</p> <p>24 Q. Did you say Ms. Ousley was present?</p> <p>25 A. She must have been, but I don't</p> | <p>1 refunding conferences did you find out the date of</p> <p>2 the conference?</p> <p>3 A. They would announce them in the documents</p> <p>4 that came out at each quarterly refunding. So when</p> <p>5 you got the documents, it would say on it when the</p> <p>6 next one was going to be. And it was pretty standard</p> <p>7 according to the calendar anyway, it was always the</p> <p>8 first Tuesday and Wednesday of February, May, August,</p> <p>9 November. Sometimes it was straddled another month</p> <p>10 like it did on October 31st, so therefore the</p> <p>11 November meeting was actually in October.</p> <p>12 Q. You mentioned that the conference had an</p> <p>13 element that went on on Tuesday, there was a meeting.</p> <p>14 And then Wednesday.</p> <p>15 A. Right.</p> <p>16 Q. Did anything occur on Monday, the Monday</p> <p>17 before --</p> <p>18 A. Well, on Monday afternoons usually at 2 or</p> <p>19 3 o'clock, Treasury would issue a press release</p> <p>20 announcing their borrowing requirement for the</p> <p>21 quarter. But that would not be at a meeting, they</p> <p>22 would just announce it.</p> <p>23 Q. Would you pick up a copy of this press</p> <p>24 release?</p> <p>25 A. I didn't deal with that. That was</p> |

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|---|---|
| <p style="text-align: right;">Page 114</p> <p>1 something that was like just when it came out it</p> <p>2 instantly went over the wires, there was no</p> <p>3 particular reason for me -- I couldn't really add</p> <p>4 anything, so I just didn't go to it. In fact, there</p> <p>5 was no meeting, so there was just nothing to do there</p> <p>6 so -- so that's not anything I paid any attention to.</p> <p>7 Q. Before lunch we were discussing the term</p> <p>8 embargo.</p> <p>9 A. Right.</p> <p>10 Q. And that you agreed to abide by the</p> <p>11 embargo at the Treasury quarterly refunding</p> <p>12 conferences. How did you come to an understanding of</p> <p>13 what the embargo was?</p> <p>14 MR. THEODOROU: Objection.</p> <p>15 THE WITNESS: I mean, when I signed that</p> <p>16 confidentiality agreement, there was language in</p> <p>17 there that said not to disclose the information until</p> <p>18 the embargo time. So that was pretty much it.</p> <p>19 BY MS. WILLIAMS:</p> <p>20 Q. Before you signed the confidentiality</p> <p>21 agreement, had you heard the term embargo used with</p> <p>22 regard to information at Treasury?</p> <p>23 A. No.</p> <p>24 Q. Did you have any discussions with</p> <p>25 Mr. Anderson about what the term embargo meant?</p> | <p style="text-align: right;">Page 116</p> <p>1 quarterly refunding conferences?</p> <p>2 A. Sure.</p> <p>3 Q. Can you tell me where you had experience</p> <p>4 with embargoes before you started attending the</p> <p>5 quarterly refunding conferences?</p> <p>6 A. They happen all the time on the Hill where</p> <p>7 I worked. When there are briefings for press,</p> <p>8 certain kinds of information. And there's an embargo</p> <p>9 until a certain time before it is released to the</p> <p>10 public.</p> <p>11 Q. And during the time the embargo is in</p> <p>12 place, what are people who are subject to the embargo</p> <p>13 allowed to do or what are they not allowed to do?</p> <p>14 MR. THEODOROU: Objection.</p> <p>15 THE WITNESS: All I know is I'd be sitting</p> <p>16 there as a staff person, there'd be a briefing, the</p> <p>17 reporters would leave, I'd leave. And, you know,</p> <p>18 that was -- that was -- you know, they were told it</p> <p>19 was embargoed until a certain time and everybody</p> <p>20 left. I -- that's all I saw.</p> <p>21 BY MS. WILLIAMS:</p> <p>22 Q. Were the reporters allow to disclose the</p> <p>23 information that was embargoed prior to the time the</p> <p>24 embargo time was up?</p> <p>25 MR. THEODOROU: Objection.</p>  |
| <p style="text-align: right;">Page 115</p> <p>1 A. Not really.</p> <p>2 Q. When you signed the confidentiality</p> <p>3 agreement, did you have an understanding of what the</p> <p>4 embargo --</p> <p>5 A. Sure. It's a common term of art in</p> <p>6 Washington.</p> <p>7 MR. THEODOROU: Objection.</p> <p>8 BY MS. WILLIAMS:</p> <p>9 Q. When you say it is a common term of art in</p> <p>10 Washington, can you tell me what you mean?</p> <p>11 MR. THEODOROU: Objection.</p> <p>12 THE WITNESS: I mean, like I was aware</p> <p>13 that the Bureau of Labor and Statistics puts out the</p> <p>14 unemployment rate. The reporters are given a report</p> <p>15 for a period of time, and it is embargoed until it</p> <p>16 comes out. This is sort of common knowledge.</p> <p>17 BY MS. WILLIAMS:</p> <p>18 Q. When you say this is sort of common</p> <p>19 knowledge, what do you mean by that?</p> <p>20 MR. THEODOROU: Objection.</p> <p>21 THE WITNESS: It's common knowledge, you</p> <p>22 know, it's --</p> <p>23 BY MS. WILLIAMS:</p> <p>24 Q. Had you had any prior experience with</p> <p>25 embargoes before you started attending the Treasury</p>   | <p style="text-align: right;">Page 117</p> <p>1 THE WITNESS: They would be calling their</p> <p>2 editors or whatever, or at least I assumed they were</p> <p>3 calling their editors.</p> <p>4 BY MS. WILLIAMS:</p> <p>5 Q. Were they allowed to release information</p> <p>6 to the public before the embargo time was up?</p> <p>7 MR. THEODOROU: Objection.</p> <p>8 THE WITNESS: My understanding was that</p> <p>9 embargo meant that it wouldn't be released to the</p> <p>10 public until the embargo time.</p> <p>11 BY MS. WILLIAMS:</p> <p>12 Q. What was your understanding of the purpose</p> <p>13 of the embargo at Treasury?</p> <p>14 MR. THEODOROU: Objection.</p> <p>15 THE WITNESS: The purpose was not to</p> <p>16 release it to the public before the embargo time.</p> <p>17 BY MS. WILLIAMS:</p> <p>18 Q. How was the embargo with regard to the</p> <p>19 Treasury quarterly refunding conferences set?</p> <p>20 A. It varied. There would usually be a press</p> <p>21 officer of some kind from the Treasury at these</p> <p>22 meetings, and it varied who it was. And at the end</p> <p>23 of the question period, that press officer would</p> <p>24 stand up and say, okay, it's such and such time, how</p> <p>25 about a ten-minute embargo. And the reporters would</p> |

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| <p>1 nod and say -- he would say, okay, it's 10 minutes,<br/> 2 the embargo time would be X. It was usually ten<br/> 3 minutes.<br/> 4 Q. And you said that sometimes it varied.<br/> 5 A. Right.<br/> 6 Q. How did it vary from what you just<br/> 7 discussed?<br/> 8 A. It would -- well, first of all, it varied<br/> 9 in duration. Most of the embargoes were ten minutes.<br/> 10 I seem to recall one for 15 and the only other time<br/> 11 that I recall any other -- in other words, almost all<br/> 12 of them were ten minutes. One was I think 15 and the<br/> 13 one on October 31st, 2001 was half an hour, which was<br/> 14 unprecedented in my experience.<br/> 15 Q. How was the embargo on October 31st, 2001<br/> 16 set?<br/> 17 MR. THEODOROU: Objection.<br/> 18 THE WITNESS: The press officer stood up<br/> 19 before the meeting and said this is embargoed and<br/> 20 we'll set the embargo time at the end. At the end,<br/> 21 he stood up and said, okay, this is embargoed until<br/> 22 10:00 a.m. and the meeting ended at 9:30.<br/> 23 BY MS. WILLIAMS:<br/> 24 Q. Who was the press officer that stood --<br/> 25 A. I don't recall.</p> | <p>1 about that. I don't really recall what it said or --<br/> 2 but, you know, it did refer to some U.S. code section<br/> 3 or something like that.<br/> 4 Q. Did you agree that if you violated the<br/> 5 embargo, you would be subject to that penalty?<br/> 6 MR. THEODOROU: Objection.<br/> 7 THE WITNESS: That was part of the written<br/> 8 document, that's what I signed, yeah.<br/> 9 BY MS. WILLIAMS:<br/> 10 Q. Do you know who enforced the penalty at<br/> 11 Treasury?<br/> 12 A. No.<br/> 13 Q. For the quarterly refunding conferences<br/> 14 that you attended at Treasury, was there always an<br/> 15 embargo discussed during those conferences?<br/> 16 A. Yes. On Wednesday --<br/> 17 Q. On Wednesday.<br/> 18 A. Well, I'm trying to think, on Tuesdays?<br/> 19 I'm not sure. I think there were embargoes on both<br/> 20 days, but I'm certain there were on Wednesdays. I'm<br/> 21 not sure.<br/> 22 Q. With regard to the Wednesday portion of<br/> 23 the conference, do you recall whether an embargo was<br/> 24 always set?<br/> 25 A. Yes, it was. Yes, there was -- there was</p>  |
| Page 119  | Page 121  |
| <p>1 Q. Do you recall if it was a male or a<br/> 2 female?<br/> 3 A. It was a male.<br/> 4 Q. Prior to the October 31st, 2001 meeting,<br/> 5 did you have any knowledge as to what the embargo was<br/> 6 going to be on October 31st?<br/> 7 A. No. The only time you'd find out the<br/> 8 embargo time is on the spot in the room at the end of<br/> 9 the question and answer period.<br/> 10 Q. Now, you stated that the purpose of the<br/> 11 embargo was not to release the information to the<br/> 12 public until the embargo time was up.<br/> 13 A. Right.<br/> 14 Q. Do you know why the information was not to<br/> 15 be released to the public until the embargo time?<br/> 16 MR. THEODOROU: Objection.<br/> 17 THE WITNESS: Nobody ever told me that.<br/> 18 BY MS. WILLIAMS:<br/> 19 Q. Did you ever ask anyone?<br/> 20 A. No.<br/> 21 Q. Were you given any information as to<br/> 22 whether there was a penalty for violating the embargo<br/> 23 at Treasury?<br/> 24 A. When I signed the confidentiality<br/> 25 agreement, there was language at the end of the form</p>   | <p>1 always an embargo on Wednesdays.<br/> 2 Q. What, if any, documents were distributed<br/> 3 at the Wednesday quarterly refunding conferences?<br/> 4 A. There were several different sets of<br/> 5 documents. There would be the Treasury press release<br/> 6 announcing the quarterly refunding issuance itself,<br/> 7 particular notes and bonds and so on.<br/> 8 There would be the minutes of the advisory<br/> 9 committee, and the recommendation of the advisory<br/> 10 committee. And there would be the same set of charts<br/> 11 that had been handed out the day before, but with<br/> 12 certain additional tables added to it that pertained<br/> 13 to the other documents. And so there was a more<br/> 14 complete set of charts that came out. And so you'd<br/> 15 get a big stack of paper at the end of the meeting or<br/> 16 actually they'd have it available during the meeting<br/> 17 and, you know, you could ask questions off of it and<br/> 18 so on.<br/> 19 Q. Did you obtain the documents -- just to<br/> 20 clarify, did you obtain the documents when you went<br/> 21 into the conference?<br/> 22 A. Usually. Sometimes they had copying<br/> 23 problems or they discovered an error at the last<br/> 24 minute and you'd get the documents at the end.<br/> 25 Q. Do you recall if any of the documents</p> |

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| <p>1 contained any language regarding an embargo?</p> <p>2 A. The Treasury press release on the</p> <p>3 refunding details certainly had language like that.</p> <p>4 None of the other documents did.</p> <p>5 Q. Do you know if any of the releases that</p> <p>6 you obtained at the conference ever said that they</p> <p>7 were -- this is a press release -- ever said that</p> <p>8 they were for immediate release?</p> <p>9 A. You know, that was one of the weird things</p> <p>10 on October 31st was I recollected it did say that on</p> <p>11 the press release, which was kind of weird because</p> <p>12 they still went ahead and set an embargo time.</p> <p>13 Q. Did you understand that the information</p> <p>14 was still embargoed until 10:00 a.m. even though it</p> <p>15 said for immediate release?</p> <p>16 MR. THEODOROU: Objection.</p> <p>17 THE WITNESS: Yes, yes.</p> <p>18 MS. WILLIAMS: Can we take a short break,</p> <p>19 like a two-minute.</p> <p>20 THE WITNESS: Sure.</p> <p>21 THE VIDEOGRAPHER: Off the record at</p> <p>22 1:32:38 p.m.</p> <p>23 (Discussion off the record.)</p> <p>24 THE VIDEOGRAPHER: Back on the record at</p> <p>25 1:34:30 p.m.</p> | <p>1 A. I had an outgoing assistant, Kristen</p> <p>2 Caiola, and so I think they both saw it.</p> <p>3 Q. Why did you draft this document?</p> <p>4 A. Because I wasn't going to be there, and I</p> <p>5 just wanted to make sure that she knew how to get</p> <p>6 there and knew what the drill was.</p> <p>7 Q. Did you follow these same instructions</p> <p>8 when you attended Treasury's quarterly refunding</p> <p>9 conferences?</p> <p>10 A. Yes. So I see I had the room number</p> <p>11 wrong, it was 3223.</p> <p>12 Q. Instead of the number --</p> <p>13 A. I remembered it was on the third floor,</p> <p>14 but the room number was 3223 here in the</p> <p>15 instructions.</p> <p>16 Q. And you believe that this was a correct</p> <p>17 room number?</p> <p>18 A. Yes.</p> <p>19 Q. Was the -- that was for the Tuesday</p> <p>20 meeting. Was the Wednesday meeting also held in room</p> <p>21 3223, you believe?</p> <p>22 A. Yes.</p> <p>23 Q. The memo states that -- and I'm 1, 2, 3,</p> <p>24 the fourth paragraph down.</p> <p>25 A. Um-hum.</p>   |
| Page 123  | Page 125  |
| <p>1 MS. WILLIAMS: I would like to have this</p> <p>2 document marked as Exhibit 16.</p> <p>3 (Davis Exhibit No. 16 was marked for</p> <p>4 identification.)</p> <p>5 BY MS. WILLIAMS:</p> <p>6 Q. Do you recognize this document, sir?</p> <p>7 A. Yes.</p> <p>8 Q. What is it?</p> <p>9 A. It was a sort of step by step instructions</p> <p>10 for Allyson before that meeting that I couldn't</p> <p>11 attend in early February of 2001.</p> <p>12 Q. Who drafted the document?</p> <p>13 A. I did.</p> <p>14 Q. Is it a true and correct copy of the</p> <p>15 document you drafted --</p> <p>16 A. Yes.</p> <p>17 Q. -- January 24th, '01?</p> <p>18 You said that this was created for Ms.</p> <p>19 Sullivan?</p> <p>20 A. Um-hum.</p> <p>21 Q. Did you distribute this document to Ms.</p> <p>22 Sullivan?</p> <p>23 A. Um-hum.</p> <p>24 Q. Did anyone else receive a copy of the</p> <p>25 document?</p>  | <p>1 Q. Sit on the back left. Why did you write</p> <p>2 that? Do you see where I'm referring, the fourth</p> <p>3 sort of paragraph down?</p> <p>4 A. I guess that's just where I usually sat.</p> <p>5 Q. Is there any particular reason why you</p> <p>6 instructed Ms. Sullivan in this document to sit on</p> <p>7 the back left?</p> <p>8 A. I just said, it's where I usually sat. I</p> <p>9 mean, this is a fairly small room so you're still 20</p> <p>10 feet away from the speaker.</p> <p>11 Q. And then under Wednesday, and I'm below</p> <p>12 number 4, the line, when you get back to the office</p> <p>13 fax the auction schedule 2, 3, 4 to list 3; what does</p> <p>14 that mean?</p> <p>15 A. Those were particular pages in the -- 2, 3</p> <p>16 and 4 -- those were particular pages in the charts</p> <p>17 that I was talking about. And list 3 was the</p> <p>18 broadcast fax list for distributing those particular</p> <p>19 pages to clients.</p> <p>20 Q. Who would have been listed on list 3?</p> <p>21 MR. THEODOROU: Objection.</p> <p>22 THE WITNESS: You know, clients.</p> <p>23 BY MS. WILLIAMS:</p> <p>24 Q. Clients of Davis Capital?</p> <p>25 A. Right.</p> |

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| <p style="text-align: right;">Page 126</p> <p>1 Q. You then wrote, note the embargo time,<br/>2 what did you mean by that?<br/>3 MR. THEODOROU: Objection.<br/>4 THE WITNESS: That it shouldn't go out<br/>5 before the embargo time.<br/>6 BY MS. WILLIAMS:<br/>7 Q. When you say it, what are you referring<br/>8 to?<br/>9 A. That facts of those particular charts and<br/>10 schedules.<br/>11 Q. And then under that, I see, immediately<br/>12 after exiting Treasury, call the following clients in<br/>13 order; do you see that?<br/>14 A. Um-hum.<br/>15 Q. When you say immediately after exiting<br/>16 Treasury, what do you mean by that?<br/>17 MR. THEODOROU: Objection.<br/>18 THE WITNESS: It says immediately after<br/>19 exiting Treasury, call the following clients.<br/>20 BY MS. WILLIAMS:<br/>21 Q. Let me be more specific. Did you mean<br/>22 during the time when the information was embargoed?<br/>23 MR. THEODOROU: Objection.<br/>24 THE WITNESS: Yes.<br/>25 BY MS. WILLIAMS:</p>   | <p style="text-align: right;">Page 128</p> <p>1 THE WITNESS: Well, he was the person who<br/>2 had originally expressed interest in getting these<br/>3 charts. And you know, it was his interest that<br/>4 prompted me to go contact Treasury to get the charts<br/>5 and set off the whole -- just set off the whole<br/>6 sequence of events that led to my attending the<br/>7 quarterly refunding meetings.<br/>8 BY MS. WILLIAMS:<br/>9 Q. And what if any discussions did you have<br/>10 with Mr. McCarthy about him honoring the embargo?<br/>11 A. Well, at some point in 1999, and I'm not<br/>12 sure exactly when, but say a year and a half before<br/>13 the October 31st 2001 meeting, somewhere around in<br/>14 there, Ward McCarthy called me up and asked if I<br/>15 could share the information with him before the<br/>16 embargo time so that he could have his story ready to<br/>17 go at the embargo time, you know, like as if he<br/>18 were -- I mean, because otherwise, you know, he was<br/>19 at a disadvantage because of all the reporters in the<br/>20 room would have their stories go up right at the<br/>21 embargo time and his would come out 15, 20, 30<br/>22 minutes later.<br/>23 Q. Did you have any discussions with any of<br/>24 the other people at the bottom of this list, 1<br/>25 through 7, about honoring the embargo?</p> |
| <p style="text-align: right;">Page 127</p> <p>1 Q. And then under that, it says, stating,<br/>2 number 1, the embargo time. Do you see that?<br/>3 A. Yes.<br/>4 Q. Why did you include in these instructions<br/>5 that immediately after exiting Treasury, call the<br/>6 following clients, in order, stating the embargo<br/>7 time?<br/>8 MR. THEODOROU: Objection.<br/>9 THE WITNESS: I wasn't sure they would<br/>10 know it. They might, and I just want to make sure.<br/>11 BY MS. WILLIAMS:<br/>12 Q. What if any expectations did you have that<br/>13 the clients would obey the embargo?<br/>14 MR. THEODOROU: Objection.<br/>15 THE WITNESS: I didn't. There was no -- I<br/>16 mean, Ward had asked me and said he would honor the<br/>17 embargo time, but I had no understanding with anybody<br/>18 else.<br/>19 BY MS. WILLIAMS:<br/>20 Q. Mr. McCarthy had told you that he would<br/>21 honor the embargo?<br/>22 A. (The witness nodded.)<br/>23 Q. You say he asked you, what had he asked<br/>24 you?<br/>25 MR. THEODOROU: Objection.</p> | <p style="text-align: right;">Page 129</p> <p>1 A. No, no.<br/>2 Q. Why did you include in this instruction to<br/>3 state the embargo time?<br/>4 MR. THEODOROU: Objection.<br/>5 THE WITNESS: I just thought it was<br/>6 important for them to know the embargo time, so<br/>7 that's why it's there.<br/>8 BY MS. WILLIAMS:<br/>9 Q. Why did you think it was important for the<br/>10 people -- the clients to know the embargo time?<br/>11 MR. THEODOROU: Objection.<br/>12 THE WITNESS: So they could honor it.<br/>13 BY MS. WILLIAMS:<br/>14 Q. You then on number 2, you write describe<br/>15 the securities. And then there's a parenthetical<br/>16 there.<br/>17 A. Um-hum.<br/>18 Q. What securities are you referring to?<br/>19 A. Well, that's what's in the press release.<br/>20 It's just the -- you know, the amount of 5, 10s and<br/>21 30s that Treasury was going to issue in the coming<br/>22 refunding?<br/>23 Q. And then under number 3, I see cite<br/>24 Treasury and remarks of interest, do you see that?<br/>25 A. Yes, I do.</p>  |

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|---|---|
| <p>1 Q. Can you give some examples of what remarks<br/>2 of interest?</p> <p>3 A. It was important to know if a particular<br/>4 security was going to be new issue or whether it was<br/>5 going to be reopened, reopening of an old issue.<br/>6 Sometimes there would be buy backs, and so there was<br/>7 additional information that was important.</p> <p>8 Q. Was there -- were there any Treasury<br/>9 remarks of interest mentioned at the October 31st,<br/>10 2001 conference?</p> <p>11 A. Well, I mean, the most important and the<br/>12 thing that dwarfed everything else was the cessation<br/>13 of the 30-year bond.</p> <p>14 Q. At the bottom of this Exhibit 16, I see a<br/>15 list of names. Who are these individuals?</p> <p>16 A. Clients.</p> <p>17 Q. Does Mr. Nothern's name appear on this<br/>18 list?</p> <p>19 A. Yes.</p> <p>20 Q. Does the number that appears next to<br/>21 Mr. Nothern's name a number that you used to contact<br/>22 him?</p> <p>23 A. Yes.</p> <p>24 Q. Do you know what number that was?</p> <p>25 A. It is a telephone number.</p>   | <p>1 Q. What, if anything, did you tell the<br/>2 clients on this list besides Mr. McCarthy, who we've<br/>3 already discussed, the other people on the list, what<br/>4 if anything did you tell them about your attendance<br/>5 at the Treasury quarterly refunding conference?</p> <p>6 MR. THEODOROU: Objection.</p> <p>7 THE WITNESS: I'm not even sure if they<br/>8 knew. Ward knew, but, you know, I'm not -- in fact,<br/>9 I'm pretty sure some of those people on that list<br/>10 didn't know.</p> <p>11 BY MS. WILLIAMS:</p> <p>12 Q. Did you ever tell Mr. Nothern that you<br/>13 attended Treasury's quarterly refunding conferences?</p> <p>14 A. No.</p> <p>15 Q. Did you ever tell him you attended any<br/>16 meetings at Treasury, besides the meetings that he<br/>17 attended with you?</p> <p>18 A. No.</p> <p>19 Q. Did you ever tell him you had any sources<br/>20 at Treasury?</p> <p>21 A. Sure.</p> <p>22 Q. Did Mr. Nothern -- did you ever discuss<br/>23 with Mr. Nothern that were you able to obtain<br/>24 information from Treasury before the information was<br/>25 announced in the media?</p> |
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| <p>1 Q. Do you know if it was his home, cell, work<br/>2 number?</p> <p>3 A. It's his work number, at MFS.</p> <p>4 Q. Is this list in any particular order?</p> <p>5 A. It's in the order I would make calls.</p> <p>6 Q. Why did you make the calls in this order?<br/>7 Why did you, for example, call Mr. McCarthy first?</p> <p>8 A. Like I said before, it would depend on the<br/>9 longevity and what my -- you know, if they were a big<br/>10 client or small client. And sort of, you know, how<br/>11 important, you know, the information was to them and<br/>12 so on. So that was just my order in which I called<br/>13 people.</p> <p>14 Q. In January -- specifically on January 24th<br/>15 of 2001, did you have clients that do not appear on<br/>16 this document?</p> <p>17 A. Sure, I had lots of clients.</p> <p>18 Q. How did you determine whose name would<br/>19 appear on this document?</p> <p>20 MR. THEODOROU: Objection.</p> <p>21 THE WITNESS: It was -- in Ward's case, it<br/>22 was his expressed interest. In every other case, it<br/>23 was people that I just, on my own volition, contacted<br/>24 without any request on their part.</p> <p>25 BY MS. WILLIAMS:</p> | <p>1 A. No.</p> <p>2 MR. THEODOROU: Objection. What was that<br/>3 answer?</p> <p>4 THE WITNESS: No.</p> <p>5 MR. ROSSETTI: Object anyway.</p> <p>6 BY MS. WILLIAMS:</p> <p>7 Q. So Mr. Nothern never expressed interest in<br/>8 obtaining information from Treasury refunding<br/>9 conferences?</p> <p>10 A. No, no.</p> <p>11 Q. But you would send him information from<br/>12 those conferences?</p> <p>13 A. Right, when I got back to the office, long<br/>14 after the embargo time, I'd broadcast fax the charts<br/>15 that we selected.</p> <p>16 Q. You had instructions to call him before<br/>17 the embargo was expired?</p> <p>18 MR. THEODOROU: Objection.</p> <p>19 THE WITNESS: You have to understand that<br/>20 the embargo time almost invariably expired before any<br/>21 such calls could be made. In fact, on the particular<br/>22 date that Allyson was there, she didn't even get out<br/>23 of the building. None of the calls were ever made.</p> <p>24 BY MS. WILLIAMS:</p> <p>25 Q. Did you ever call Mr. Nothern before the</p>   |

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|--|--|
| <p>1 embargo expired?</p> <p>2 A. On October 31st, 2001, I placed a call to</p> <p>3 him. It didn't get through.</p> <p>4 Q. Did you ever call him besides October</p> <p>5 31st, 2001 before the embargo expired?</p> <p>6 A. There were a few prior quarterly</p> <p>7 refundings, but it was almost -- in fact, I'm sure</p> <p>8 all of those were after the embargo time because</p> <p>9 those were 10-minute embargoes. It takes 3 or 4</p> <p>10 minutes at least to get out of the building.</p> <p>11 And, you know, I would certainly have at</p> <p>12 least a minute or two conversation with Ward. You</p> <p>13 know, he was at the end of the list so, you know --</p> <p>14 you know, the only time that I am sure that I called</p> <p>15 him before the embargo time was on October 31st, 2001</p> <p>16 and I got an answering machine.</p> <p>17 Q. Did you leave a voicemail?</p> <p>18 A. Yes.</p> <p>19 Q. Did you mention the embargo in your</p> <p>20 voicemail?</p> <p>21 A. I'm not sure of that at all. I am sure</p> <p>22 with some of the other people I called, but I'm not</p> <p>23 sure in that particular voicemail.</p> <p>24 Q. Was it your practice to mention the</p> <p>25 embargo when you made these calls?</p>                                       | <p>1 Q. Did he tell you why he didn't want to</p> <p>2 receive --</p> <p>3 A. No, he just said don't call before the</p> <p>4 embargo time. I said, fine.</p> <p>5 Q. Did he have an understanding that you were</p> <p>6 attending the quarterly refunding conferences?</p> <p>7 MR. THEODOROU: Objection.</p> <p>8 THE WITNESS: I don't -- I don't think so,</p> <p>9 I don't know. I mean, I didn't -- I just called him</p> <p>10 up and said, hey, you know, here's what the refunding</p> <p>11 is. And I don't recall -- I mean, I don't recall</p> <p>12 ever having a conversation with anybody besides Ward</p> <p>13 about actually attending those meetings.</p> <p>14 BY MS. WILLIAMS:</p> <p>15 Q. How did Mr. Greenlawn know that the</p> <p>16 information was embargoed?</p> <p>17 MR. THEODOROU: Objection.</p> <p>18 THE WITNESS: I don't know. I mean, he --</p> <p>19 after the fact, you know, the next time I called him</p> <p>20 up said, you know, don't call. But that's all I</p> <p>21 know, I don't know how he figured it out, but that's</p> <p>22 what happened.</p> <p>23 BY MS. WILLIAMS:</p> <p>24 Q. Do you recall ever mentioning the embargo</p> <p>25 to Mr. Greenlawn before that conversation where he</p>                                   |
| Page 135   | Page 137   |
| <p>1 MR. THEODOROU: Objection.</p> <p>2 THE WITNESS: I usually mentioned it, but</p> <p>3 because he was at the end of the list, and all the</p> <p>4 previous times it had been after the embargo, except</p> <p>5 this one time, I'm not sure I mentioned the embargo</p> <p>6 time at all. You know, I'm -- yeah.</p> <p>7 BY MS. WILLIAMS:</p> <p>8 Q. Did any of your clients ever ask you not</p> <p>9 to provide them with information before the embargo</p> <p>10 expired?</p> <p>11 A. Yes.</p> <p>12 Q. Who -- who asked to you do that?</p> <p>13 A. The one I remember the best is Kathy</p> <p>14 Bostjancic at Merrill Lynch. She certainly asked me</p> <p>15 not to. And what's his name -- Dave Greenlawn at</p> <p>16 Morgan Stanley, who was not on this list, asked me</p> <p>17 not to call him before the embargo.</p> <p>18 Q. Had you called Mr. Greenlawn before the</p> <p>19 embargo prior to asking him not to do that anymore?</p> <p>20 A. There was one time when I might have</p> <p>21 gotten a call through to him like one minute before</p> <p>22 the embargo or right at the embargo time, but the</p> <p>23 next time like a quarter later, I called him, and</p> <p>24 even though it was after the embargo, he said please</p> <p>25 just don't call.</p> | <p>1 said please don't call me until the embargo expires?</p> <p>2 A. I don't think I did, because it was right</p> <p>3 around the embargo time. You know, it was like right</p> <p>4 at the embargo time. He was also down the list and</p> <p>5 ahead of Nothern.</p> <p>6 Q. What about Ms. Bostjancic, how did she</p> <p>7 come to ask you not to call her before the embargo?</p> <p>8 MR. THEODOROU: Objection.</p> <p>9 THE WITNESS: It was the same thing. I</p> <p>10 just called her up and said, hey, Treasury is going</p> <p>11 to do this. And she would not say much and then, you</p> <p>12 know, like a quarter later, I called up, and she</p> <p>13 said, Pete, don't call up. Okay.</p> <p>14 BY MS. WILLIAMS:</p> <p>15 Q. She said don't call ever? Can you tell me</p> <p>16 exactly what she asked you not to do?</p> <p>17 A. She meant regarding the quarterly</p> <p>18 refundings.</p> <p>19 Q. Did she tell you when you could call or</p> <p>20 she just didn't want to receive calls at all?</p> <p>21 A. Oh, we talk all the time about tax cuts</p> <p>22 and deficits and so on, but what she meant was in</p> <p>23 regard to the quarterly refundings don't call.</p> <p>24 Q. Did she specify don't call during the</p> <p>25 embargo time?</p> |

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|--|--|
| <p>1 A. No.</p> <p>2 Q. Or don't call ever?</p> <p>3 A. She didn't, she just said don't call us</p> <p>4 about this.</p> <p>5 Q. Did Ms. Bostjancic understand that you</p> <p>6 attended the quarterly refunding conferences?</p> <p>7 A. I don't think so. I mean, you know, Ward</p> <p>8 and I had specifically talked about it. The rest of</p> <p>9 the people I would just sort of some time in late</p> <p>10 '89 -- '99 just called up and volunteered the</p> <p>11 information.</p> <p>12 Q. How did Ms. Bostjancic come to ask you not</p> <p>13 to call her about the Treasury quarterly refunding</p> <p>14 conferences if you never told her that you attended</p> <p>15 the quarterly refunding conferences?</p> <p>16 A. You know, all I can tell you is I called</p> <p>17 her up one time. And then I called her up a quarter</p> <p>18 later and she said, Pete, you know, we don't want</p> <p>19 this information, so I said, fine.</p> <p>20 Q. Did she tell you why she didn't want the</p> <p>21 information?</p> <p>22 A. No.</p> <p>23 MR. THEODOROU: Objection.</p> <p>24 BY MS. WILLIAMS:</p> <p>25 Q. Do you know why Mr. McCarthy wanted</p>  | <p>1 half, I don't remember whether it was before the</p> <p>2 February meeting or before the May meeting, it was</p> <p>3 one of those two. And then for the next few meetings</p> <p>4 I was just calling him. And then some time in late</p> <p>5 '99, early 2000, I started voluntarily just calling</p> <p>6 other people.</p> <p>7 Q. Back to Mr. Greenlawn and Ms. Bostjancic</p> <p>8 for a second. When you called them the time you</p> <p>9 called when the embargo was still on, what, if</p> <p>10 anything, did you say was your source of the</p> <p>11 information that were you providing to them?</p> <p>12 A. I just called them up and said, hey,</p> <p>13 Treasury is going to do X billion 5s, X billion 10s,</p> <p>14 X billion 30s, and that was it.</p> <p>15 Q. Did you say anything about how you came to</p> <p>16 find out that information?</p> <p>17 A. No, I didn't.</p> <p>18 Q. Have you ever been convicted of a crime?</p> <p>19 A. Yes.</p> <p>20 Q. When?</p> <p>21 A. When?</p> <p>22 Q. When.</p> <p>23 A. I don't know, I'd have to consult some</p> <p>24 documents. I know when I was sentenced, but I don't</p> <p>25 know when I was convicted.</p> |
| Page 139   | Page 141   |
| <p>1 information from the quarterly refunding conferences?</p> <p>2 A. Well, he wanted this data from these</p> <p>3 charts, some of the charts themselves because he's</p> <p>4 head of one of the main bond market research funds --</p> <p>5 research organizations.</p> <p>6 And, you know, he would analyze that data</p> <p>7 and come to conclusions and publish those to his</p> <p>8 clients. So he was finding that he was putting his</p> <p>9 analyses of the quarterly refunding out long after,</p> <p>10 15, 20, 30 minutes after the wire services had put it</p> <p>11 out. And so he was trying to get on to an equal</p> <p>12 footing with the wire services.</p> <p>13 Q. What, if anything, did Mr. McCarthy say</p> <p>14 about his willingness to abide by the embargo?</p> <p>15 A. He specifically said that, you know, if I</p> <p>16 would convey the information to him, he would abide</p> <p>17 by the embargo.</p> <p>18 Q. Do you know if Mr. McCarthy ever divulged</p> <p>19 the information to anyone before the embargo expired?</p> <p>20 A. I have no way of knowing that, I just</p> <p>21 believe that he honored it.</p> <p>22 Q. Approximately how many times did you</p> <p>23 provide Mr. McCarthy with information when the</p> <p>24 embargo was still in place?</p> <p>25 A. He asked me some time in '99, the first</p> | <p>1 Q. When were you sentenced?</p> <p>2 A. I was sentenced on March 18th, 2005,</p> <p>3 right?</p> <p>4 Q. What crimes were you convicted of</p> <p>5 committing?</p> <p>6 A. I pled guilty to conspiracy,</p> <p>7 misappropriation of government property and</p> <p>8 securities fraud.</p> <p>9 Q. When you say conspiracy, was that</p> <p>10 conspiracy to defraud the United States?</p> <p>11 MR. STANCIL: If you remember the exact</p> <p>12 nature of the plea agreement, say so, but don't try</p> <p>13 to -- I don't want you to try to --</p> <p>14 THE WITNESS: I don't remember. You've</p> <p>15 got the charges.</p> <p>16 BY MS. WILLIAMS:</p> <p>17 Q. I'm just trying to find out your</p> <p>18 recollection.</p> <p>19 A. My recollection, it's conspiracy. I don't</p> <p>20 know what else went with it.</p> <p>21 Q. In which court was this criminal action</p> <p>22 against you?</p> <p>23 A. It was the U.S. District Court in southern</p> <p>24 Manhattan.</p> <p>25 Q. Southern District of New York?</p>   |

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|---|--|
| <p>1 A. Right.</p> <p>2 Q. You said you pled guilty?</p> <p>3 A. Right.</p> <p>4 Q. Did you participate in a plea hearing</p> <p>5 during that criminal case?</p> <p>6 A. Plea hearing?</p> <p>7 Q. A hearing in which you entered a plea of</p> <p>8 guilty?</p> <p>9 A. Oh, yeah, sure.</p> <p>10 Q. Did you make a statement to the court at</p> <p>11 that hearing?</p> <p>12 A. Yes.</p> <p>13 Q. Do you believe the statement that you made</p> <p>14 to the court was true and correct?</p> <p>15 A. Yes.</p> <p>16 Q. During the hearing, did the court present</p> <p>17 you with the charges against you?</p> <p>18 A. Yes.</p> <p>19 Q. Do you believe the court correctly</p> <p>20 presented the charges against you during that</p> <p>21 hearing?</p> <p>22 A. Yes.</p> <p>23 Q. I'd like to mark this as an exhibit.</p> <p>24 (Davis Exhibit No. 17 was marked for</p> <p>25 identification.)</p>                    | <p>1 A. On October 31st, 2001.</p> <p>2 Q. Was the information that you disclosed</p> <p>3 subject to the embargo?</p> <p>4 A. Yes.</p> <p>5 Q. Did you agree that you had a duty to not</p> <p>6 disclose that information before the embargo expired?</p> <p>7 MR. THEODOROU: Objection.</p> <p>8 THE WITNESS: Yes.</p> <p>9 BY MS. WILLIAMS:</p> <p>10 Q. You say you were sentenced as a result of</p> <p>11 your guilty plea?</p> <p>12 A. Yes.</p> <p>13 Q. I'd like to have this marked as an</p> <p>14 exhibit.</p> <p>15 (Davis Exhibit No. 18 was marked for</p> <p>16 identification.)</p> <p>17 BY MS. WILLIAMS:</p> <p>18 Q. Do you recognize this document, sir?</p> <p>19 A. Yes.</p> <p>20 Q. What is it?</p> <p>21 A. It's a transcript of my sentencing</p> <p>22 hearing, March 18th of 2005.</p> <p>23 Q. Did you make any statements during your</p> <p>24 sentencing hearing?</p> <p>25 A. Yes.</p>  |
| Page 143  | Page 145   |
| <p>1 BY MS. WILLIAMS:</p> <p>2 Q. Do you recognize this document, sir?</p> <p>3 A. Yes.</p> <p>4 Q. What is it?</p> <p>5 A. It's the plea hearing.</p> <p>6 Q. Transcript?</p> <p>7 A. Yeah, right, transcript.</p> <p>8 Q. Could you briefly summarize the behavior</p> <p>9 that you're charged with engaging in and which you</p> <p>10 plead guilty to?</p> <p>11 MR. THEODOROU: Objection.</p> <p>12 THE WITNESS: I don't understand what</p> <p>13 you're asking.</p> <p>14 BY MS. WILLIAMS:</p> <p>15 Q. You said you pled guilty to certain</p> <p>16 criminal charges. Could you tell us what you did</p> <p>17 that gave rise to those charges?</p> <p>18 A. I disclosed --</p> <p>19 MR. THEODOROU: Objection.</p> <p>20 THE WITNESS: 30-year bond information</p> <p>21 before the embargo time.</p> <p>22 BY MS. WILLIAMS:</p> <p>23 Q. To who?</p> <p>24 A. To some clients.</p> <p>25 Q. And when did you do that?</p> | <p>1 Q. Do you believe the statements you made to</p> <p>2 the court during the sentencing hearing were true and</p> <p>3 correct?</p> <p>4 A. Yes.</p> <p>5 Q. Could you turn to -- and the numbers I'm</p> <p>6 referring to are going to be on the right-hand side.</p> <p>7 A. I see.</p> <p>8 Q. Page 9.</p> <p>9 A. Okay.</p> <p>10 Q. I'm starting with line 20, do you see that</p> <p>11 line 20 on the right side?</p> <p>12 A. Um-hum, um-hum.</p> <p>13 Q. It reads, the defendant, do you agree the</p> <p>14 defendant is you, Mr. Davis?</p> <p>15 A. Do I what?</p> <p>16 Q. Do you agree -- when it says the</p> <p>17 defendant, that's you?</p> <p>18 A. Defendant was me.</p> <p>19 Q. Okay. "I'm very sorry for what I did that</p> <p>20 brings me here today, I understand it's wrong and I</p> <p>21 make no excuses, I apologize to those who I've hurt</p> <p>22 and seek their forgiveness. I do ask you to consider</p> <p>23 that other than this instance, I've lived a good and</p> <p>24 ethical life. Since this happened, I've done</p> <p>25 everything I can to make amends. I'd give anything</p> |

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| <p>1 to undo it, it's not consistent with my character and<br/>2 it will never happen again, thank you."<br/>3 Did I read that correctly?<br/>4 A. Yes, you did.<br/>5 Q. Sitting here today, are you still sorry<br/>6 for what you did that gave rise to the case against<br/>7 you?<br/>8 MR. THEODOROU: Objection.<br/>9 THE WITNESS: Yes.<br/>10 BY MS. WILLIAMS:<br/>11 Q. What were you sentenced to?<br/>12 A. A \$30,000 fine and two years probation.<br/>13 Q. Were you also ordered to pay a special<br/>14 assessment of \$300?<br/>15 A. Yes.<br/>16 Q. With regard to the \$30,000 fine, my<br/>17 understanding it was payable in monthly installments<br/>18 throughout a two-year period; is that correct?<br/>19 A. Correct.<br/>20 Q. So are you currently on probation?<br/>21 A. Yes.<br/>22 Q. Have you been paying your monthly<br/>23 installments of the \$30,000 fine?<br/>24 A. Yes.<br/>25 Q. Besides this conviction that we just</p> | <p>1 Q. Do you recognize what's been marked as<br/>2 Exhibit 19?<br/>3 A. It's been a long time, but it looks like<br/>4 some sort of -- it says consent.<br/>5 Q. Could you turn to the last page of the<br/>6 document.<br/>7 A. Okay.<br/>8 Q. SEC NOTH 00145688. Do you see your<br/>9 signature?<br/>10 A. Yes, that's my signature.<br/>11 Q. And do you believe this is a copy of the<br/>12 consent that you entered into with the SEC?<br/>13 A. Yes, yes.<br/>14 Q. And then if you could turn to Exhibit 20,<br/>15 do you recognize this document?<br/>16 A. I'm trying to find out what this is. Is<br/>17 this --<br/>18 MR. STANCIL: I'm not even sure you've<br/>19 seen the subpoena.<br/>20 THE WITNESS: No, I don't think I've seen<br/>21 this before.<br/>22 BY MS. WILLIAMS:<br/>23 Q. Do you know if a judgment was entered<br/>24 against you in the SEC's case?<br/>25 A. Yes.</p> |
| Page 147  | Page 149  |
| <p>1 discussed, have you ever been convicted of any other<br/>2 crimes?<br/>3 A. No.<br/>4 Q. Have you ever been charged with any other<br/>5 crimes?<br/>6 A. No.<br/>7 Q. Have you ever been sued in a civil matter?<br/>8 A. No.<br/>9 Q. Were you also involved in an investigation<br/>10 by the SEC?<br/>11 A. Yes.<br/>12 Q. Regarding trading in the 30-year bond?<br/>13 A. Yeah.<br/>14 Q. Was the SEC's investigation of you<br/>15 resolved?<br/>16 A. I don't know. Yeah, I guess.<br/>17 Q. I'd like to have --<br/>18 A. I paid an SEC fine.<br/>19 Q. I'd like to have these documents marked as<br/>20 Exhibits 19 and 20.<br/>21 MR. STANCIL: John, don't tell me you lost<br/>22 the check.<br/>23 (Davis Exhibit Nos. 19 &amp; 20 were<br/>24 marked for identification.)<br/>25 BY MS. WILLIAMS:</p>   | <p>1 Q. And in that judgment, will you -- were you<br/>2 ordered to pay certain monies?<br/>3 A. Yes, I paid \$150,000 to the SEC.<br/>4 Q. A total of \$150,000?<br/>5 A. Right.<br/>6 Q. Were you also permanently enjoined from<br/>7 violating certain sections of the Securities Act --<br/>8 Securities Exchange Act?<br/>9 MR. THEODOROU: Objection.<br/>10 THE WITNESS: Yes.<br/>11 BY MS. WILLIAMS:<br/>12 Q. Except for the case that the SEC brought<br/>13 against you, have you ever been sued in any other<br/>14 case?<br/>15 A. I'm not sure.<br/>16 MR. STANCIL: Yes.<br/>17 THE WITNESS: I --<br/>18 MR. STANCIL: Chicago?<br/>19 THE WITNESS: Yes, there's one other case<br/>20 BY MS. WILLIAMS:<br/>21 Q. Who sued you in --<br/>22 MR. THEODOROU: Objection.<br/>23 THE WITNESS: I forget the name of the<br/>24 firm.<br/>25 BY MS. WILLIAMS:</p>                                    |

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|---|--|
| <p>1 Q. Could you tell me what that other case was<br/>2 about?<br/>3 A. There was a firm that claimed damages and<br/>4 sued Goldman and me, and I forget who else.<br/>5 Q. Damages for what?<br/>6 A. For money lost in Treasury bond trades or<br/>7 options on Treasury bonds, I don't know.<br/>8 Q. When was that case filed?<br/>9 A. I don't know.<br/>10 Q. Can you give me -- was it after 2000?<br/>11 A. Oh, it was after 2001. It was, I don't<br/>12 know, a few years ago.<br/>13 MR. STANCIL: Maybe I could clear this up<br/>14 Was this related to the October 31, 2001 refunding?<br/>15 THE WITNESS: Yeah.<br/>16 BY MS. WILLIAMS:<br/>17 Q. Where was that case filed?<br/>18 A. I think in Chicago.<br/>19 Q. In Federal Court in Illinois?<br/>20 A. I have no idea which court it was.<br/>21 Q. Do you know if it was resolved?<br/>22 A. I don't think it's resolved.<br/>23 Q. Are you still involved in the case?<br/>24 MR. THEODOROU: Objection.<br/>25 THE WITNESS: It's -- I'm named as a -- I</p> | <p>1 A. Well, this is a Treasury news release<br/>2 regarding their borrowing requirement, you know,<br/>3 Monday afternoon.<br/>4 Q. What's the date of the document?<br/>5 A. October 29, 2001.<br/>6 Q. Do you recall if you have seen this<br/>7 document before today?<br/>8 A. I don't specifically recall it. I may<br/>9 have seen it at the time, but like I say, I didn't<br/>10 pay too much attention to the Monday press release of<br/>11 the borrowing requirement.<br/>12 Q. Is this a document that would have been<br/>13 sent out on the Monday of the quarterly --<br/>14 A. This was -- yes, this was the Monday<br/>15 document before the Tuesday and Wednesday meetings<br/>16 that I did attend.<br/>17 MS. WILLIAMS: Do you want it take a break<br/>18 now? It's been a little over an hour.<br/>19 MR. THEODOROU: Just for the record --<br/>20 just a second, sake of the record, there is a line of<br/>21 questioning about the -- his plea. And I raised a<br/>22 series of objections, a standing objection. I had an<br/>23 objection because Mr. Nothorn was not a part of that<br/>24 plea. And that's something that we'll have to take<br/>25 up, I guess, with the court.</p> |
| Page 151  | Page 153   |
| <p>1 forget what I'm named as --<br/>2 MR. STANCIL: Whatever you remember is<br/>3 fine. If they have questions for me, they can send<br/>4 them to me later.<br/>5 THE WITNESS: I don't know much about the<br/>6 case.<br/>7 BY MS. WILLIAMS:<br/>8 Q. And you don't recall who the plaintiff in<br/>9 the case was?<br/>10 A. It was some firm that was in the market,<br/>11 I don't remember the name of the firm.<br/>12 Q. Have you ever sued anyone?<br/>13 A. No.<br/>14 Q. Just to follow up, besides this case that<br/>15 you think was pending in Chicago or may still be,<br/>16 have you ever been sued by anyone else?<br/>17 A. No.<br/>18 Q. And you've never sued anyone?<br/>19 A. No.<br/>20 Q. I'd like to have this marked as Exhibit<br/>21 21.<br/>22 (Davis Exhibit No. 21 was marked for<br/>23 identification.)<br/>24 BY MS. WILLIAMS:<br/>25 Q. Do you recognize this document, sir?</p>  | <p>1 MS. WILLIAMS: Mr. Nothorn --<br/>2 MR. THEODOROU: Was never part of that<br/>3 plea.<br/>4 MS. WILLIAMS: You're referring to --<br/>5 MR. THEODOROU: To his statement to the<br/>6 court as to what he was pleading guilty to.<br/>7 MS. WILLIAMS: Right, I didn't refer to<br/>8 Mr. Nothorn when asking about the plea.<br/>9 MR. THEODOROU: Okay, I just want to make<br/>10 sure on the record on that.<br/>11 MS. WILLIAMS: Yes, he wasn't present, but<br/>12 I do believe clients were mentioned, not by name, but<br/>13 generally speaking.<br/>14 MR. THEODOROU: Two clients.<br/>15 MS. WILLIAMS: But the word clients was<br/>16 generally mentioned in the hearing transcript.<br/>17 Whether or not that includes Mr. Nothorn is yet to be<br/>18 determined.<br/>19 MR. THEODOROU: I'll take that up on<br/>20 cross, but --<br/>21 THE VIDEOGRAPHER: This is the end of tape<br/>22 number 3 in the videotape deposition of Peter Davis.<br/>23 Off the record at 2:15:26 p.m. on April 19, 2006.<br/>24 (Recess.)<br/>25 THE VIDEOGRAPHER: This is the beginning</p>   |

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|---|---|
| <p>1 of tape number 4 in the videotape deposition of</p> <p>2 Mr. Peter Davis. On the record at 2:38:56 p.m. on</p> <p>3 April 19th, 2006.</p> <p>4 MS. WILLIAMS: Exhibit 22, I'd like to</p> <p>5 have this marked.</p> <p>6 (Davis Exhibit No. 22 was marked for</p> <p>7 identification.)</p> <p>8 BY MS. WILLIAMS:</p> <p>9 Q. Do you recognize this document, Mr. Davis?</p> <p>10 A. Yeah, it's an E-mail of my calendar on the</p> <p>11 morning of October 29, 2001. And it shows the E-mail</p> <p>12 addresses in the BCC of all the clients and others</p> <p>13 who are on my -- who are on my E-mail list as of that</p> <p>14 morning.</p> <p>15 Q. Who drafted this document?</p> <p>16 A. I did in conjunction with my assistant,</p> <p>17 Allyson.</p> <p>18 Q. What time did you send this document?</p> <p>19 A. The time stamp on it is 9:15 in the</p> <p>20 morning.</p> <p>21 Q. And I want to know if Mr. Nothern's name</p> <p>22 appears on the document and --</p> <p>23 A. I see it.</p> <p>24 Q. -- refer you to 12 lines up?</p> <p>25 A. Yes, snothern@mfs.com.</p> | <p>1 unrelated reasons. And so he was sort of known to be</p> <p>2 taking the position for a long time, and then finally</p> <p>3 it happened.</p> <p>4 Q. Was it your practice to notify your</p> <p>5 clients of the dates of the quarterly refunding</p> <p>6 conference in a weekly calendar before the</p> <p>7 conference?</p> <p>8 A. I usually did. I don't think I -- I don't</p> <p>9 think I was religious about it, but I usually did.</p> <p>10 Q. Did you usually notify them of who would</p> <p>11 be speaking at the conference?</p> <p>12 MR. THEODOROU: Objection.</p> <p>13 THE WITNESS: Usually I wouldn't</p> <p>14 necessarily know until I got in the room. I mean,</p> <p>15 usually Malvey would say some things and usually John</p> <p>16 Auten would do the economics on Tuesday mornings.</p> <p>17 See, part of the problem was when the position was</p> <p>18 vacant, you know, when Fisher's position or say Roger</p> <p>19 Anderson's position was vacant, then Malvey would</p> <p>20 present.</p> <p>21 Q. Would Mr. Anderson ever present at the</p> <p>22 quarterly refunding conferences?</p> <p>23 A. Yes.</p> <p>24 Q. And just to clarify, did you usually not</p> <p>25 know who was going to be speaking until you actually</p> |
| Page 155  | Page 157  |
| <p>1 Q. Where did you get the information that</p> <p>2 appears in the body of the E-mail?</p> <p>3 A. I already told you, it comes from my</p> <p>4 culling of various calendars at the beginning of the</p> <p>5 week, National Journal, BNA Daily Report For</p> <p>6 Executives, and my own research.</p> <p>7 Q. In the document, do you see the date</p> <p>8 Wednesday 31?</p> <p>9 A. Yes.</p> <p>10 Q. And then right under that 9:00 a.m.?</p> <p>11 A. Yeah.</p> <p>12 Q. Fisher, Treasury quarterly refunding,</p> <p>13 D.C.?</p> <p>14 A. Yes, I see that.</p> <p>15 Q. Who is Fisher?</p> <p>16 A. Peter Fisher was the undersecretary for</p> <p>17 federal finance.</p> <p>18 Q. And why does his name appear on that line?</p> <p>19 A. Because he was the person who was going to</p> <p>20 speak.</p> <p>21 Q. How did you know Mr. Fisher was going to</p> <p>22 speak at that quarterly refunding conference on the</p> <p>23 31st?</p> <p>24 A. Pretty sure Treasury announced it. His</p> <p>25 nomination had been held up by Jessie Helms for</p>                         | <p>1 attended the conferences?</p> <p>2 MR. THEODOROU: Objection.</p> <p>3 THE WITNESS: Yes.</p> <p>4 BY MS. WILLIAMS:</p> <p>5 Q. Do you know why you were notified that</p> <p>6 Mr. Fisher would be speaking at the October 31st</p> <p>7 conference?</p> <p>8 A. Like I say, my recollection is that</p> <p>9 Treasury announced it. But I don't know, I don't</p> <p>10 recall for sure.</p> <p>11 Q. Do you know if there's anything</p> <p>12 significant or did you find anything significant</p> <p>13 about Mr. Fisher presenting at the October 31st</p> <p>14 conference?</p> <p>15 MR. THEODOROU: Objection.</p> <p>16 THE WITNESS: He was newly appointed and</p> <p>17 everybody was anticipating what sort of policy he</p> <p>18 might put out. I mean, usually when a senior</p> <p>19 official assumes office and speaks for the first</p> <p>20 time, people are interested in hearing what he has to</p> <p>21 say.</p> <p>22 BY MS. WILLIAMS:</p> <p>23 Q. Did you go to Treasury on October 30th,</p> <p>24 2001?</p> <p>25 A. I don't have a clear recollection. I</p>  |

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|---|--|
| <p>1 assume I did. I distinctly remember going on the</p> <p>2 31st.</p> <p>3 MS. WILLIAMS: I'd like to have this</p> <p>4 marked as Exhibit 23.</p> <p>5 (Davis Exhibit No. 23 was marked for</p> <p>6 identification.)</p> <p>7 BY MS. WILLIAMS:</p> <p>8 Q. Do you recognize this document, Mr. Davis?</p> <p>9 A. It's -- yes, it's a Treasury press release</p> <p>10 announcing Fisher would speak on the -- 9:00 a.m.,</p> <p>11 Wednesday, the 31st.</p> <p>12 Q. And what's the date of this document?</p> <p>13 A. October 30th.</p> <p>14 Q. Of?</p> <p>15 A. 2001.</p> <p>16 Q. Do you know if you saw this release prior</p> <p>17 to October 31st, 2001?</p> <p>18 A. I'm sorry, say again?</p> <p>19 Q. Do you know if you saw this press release</p> <p>20 before October 31st? It is dated October 30th, do</p> <p>21 you know if you saw it on October 30th, 2001?</p> <p>22 A. I don't recall, I mean --</p> <p>23 Q. I wanted to refer to you the second</p> <p>24 paragraph of the document. The last sentence in that</p> <p>25 paragraph, "the event will have a 10 o'clock a.m.</p> | <p>1 A. No, that's unique.</p> <p>2 Q. I'd like to have this marked as Exhibit</p> <p>3 24.</p> <p>4 (Davis Exhibit No. 24 was marked for</p> <p>5 identification.)</p> <p>6 BY MS. WILLIAMS:</p> <p>7 Q. Do you recognize this document, sir?</p> <p>8 A. Yes, it's a fax cover page dated October</p> <p>9 30th, 2001.</p> <p>10 Q. And who is the fax from?</p> <p>11 A. Me.</p> <p>12 Q. To whom?</p> <p>13 A. Clients.</p> <p>14 Q. Do you know -- did you prepare this fax</p> <p>15 cover sheet?</p> <p>16 A. Yes.</p> <p>17 Q. It says in bold, "five pages including</p> <p>18 this cover."</p> <p>19 A. Right.</p> <p>20 Q. "Charts from this morning's Treasury</p> <p>21 refunding follow."</p> <p>22 A. Right.</p> <p>23 Q. Do you recall sending clients a fax on</p> <p>24 October 30th, 2001?</p> <p>25 A. Sure.</p>   |
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| <p>1 news embargo," do you see that?</p> <p>2 A. That's the first time I recall seeing</p> <p>3 that. I'm very clear the first time I ever heard</p> <p>4 that there was going to be a 10 o'clock embargo was</p> <p>5 at the meeting itself.</p> <p>6 Q. So just to clarify, prior to the actual</p> <p>7 Wednesday, October 31st meeting, you were not</p> <p>8 aware --</p> <p>9 A. No.</p> <p>10 Q. That the embargo time --</p> <p>11 A. Right.</p> <p>12 Q. Was 10:00 a.m.?</p> <p>13 A. Right. I learned that the embargo time</p> <p>14 was 10:00 a.m. at the meeting, I didn't learn it</p> <p>15 before.</p> <p>16 Q. Do you know if this document was publicly</p> <p>17 available?</p> <p>18 MR. THEODOROU: Objection.</p> <p>19 MR. STANCIL: Do you know?</p> <p>20 THE WITNESS: No, I don't have any</p> <p>21 specific knowledge. It is a Treasury press release.</p> <p>22 I didn't see this before that meeting.</p> <p>23 BY MS. WILLIAMS:</p> <p>24 Q. Do you recall any time when Treasury set</p> <p>25 the embargo time before a Wednesday meeting?</p>                               | <p>1 MR. THEODOROU: Objection.</p> <p>2 MR. STANCIL: Do you recall sending it or</p> <p>3 you think you must have based on this document?</p> <p>4 MR. THEODOROU: And I object.</p> <p>5 THE WITNESS: Well, this is a standard</p> <p>6 cover sheet for the charts.</p> <p>7 MR. STANCIL: She needs to know -- she's</p> <p>8 entitled to know whether you have a specific</p> <p>9 recollection of standing at the fax machine and</p> <p>10 sending it, or whether based on this, you would</p> <p>11 assume you did.</p> <p>12 THE WITNESS: I don't remember faxing it.</p> <p>13 I mean, it all blurs together. I mean, I did it</p> <p>14 every three months.</p> <p>15 BY MS. WILLIAMS:</p> <p>16 Q. You did what every three months?</p> <p>17 A. Faxed certain charts out to the clients on</p> <p>18 the Tuesday of the quarterly refundings.</p> <p>19 Q. Would have you drafted a fax cover sheet</p> <p>20 when you were transmitting these charts to the</p> <p>21 clients?</p> <p>22 A. Yes.</p> <p>23 Q. Would the fax cover sheet have looked like</p> <p>24 the sheet here?</p> <p>25 A. Yes.</p> |

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1 Q. Do you believe that this fax cover sheet  
2 was used to transmit documents to clients?  
3 MR. THEODOROU: Objection.  
4 THE WITNESS: Yes.  
5 BY MS. WILLIAMS:  
6 Q. What charts -- do you know what charts you  
7 would have been referring to here?  
8 A. I recall one particular table. The other  
9 ones, I don't recall. But there was a particular  
10 table about foreign holdings of Treasuries that was  
11 the key piece of information that people wanted once  
12 it was released. There were other -- the chart book  
13 had like 20, 30 pages of charts and tables in it and  
14 I forget which other ones I would pull out.  
15 Q. I'd like to have this marked as Exhibit  
16 25.  
17 (Davis Exhibit No. 25 was marked for  
18 identification.)  
19 BY MS. WILLIAMS:  
20 Q. I'm just going to be referring actually to  
21 the first page of the document.  
22 A. Um-hum.  
23 Q. Do you -- do you recognize this document?  
24 A. Yeah, I forget the name of the company,  
25 but I had a -- you know, broadcast fax service. And

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1 I had a preexisting list to which I -- so remember  
2 earlier when we talked about list 3, I just dial-up  
3 the service, I'd punch in list 3, and it would send  
4 out the documents to these. And this is a report of  
5 what was sent out.  
6 Q. On what date?  
7 A. October 30th.  
8 Q. Of what year?  
9 A. 2001.  
10 Q. And so the people who are listed under  
11 recipient on this list, would those have been people  
12 on list 3?  
13 A. Yes, you notice on the left there, where  
14 it says list number 3.  
15 Q. Do you see Mr. Nothern's name on this  
16 list? And I'd refer to you the third from the  
17 bottom.  
18 A. Yes.  
19 Q. And then under PGS, which I think is  
20 pages --  
21 A. Um-hum.  
22 Q. -- do you see the number 5?  
23 A. Yes, it says five pages.  
24 Q. If I could refer you back to number --  
25 Exhibit Number 24, the fax cover sheet.

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1 A. Right.  
2 Q. That also was a five-page document that  
3 you sent with the fax cover sheet?  
4 A. Um-hum.  
5 MR. THEODOROU: Objection.  
6 BY MS. WILLIAMS:  
7 Q. Is that correct?  
8 A. Yes.  
9 Q. Do you know whether this report is related  
10 to the fax that --  
11 A. I don't.  
12 Q. -- the fax cover sheet?  
13 A. I don't.  
14 Q. But do you think that you sent a five-page  
15 fax on October 30th, 2001, which relates to this  
16 delivery report?  
17 A. I don't know if this delivery report  
18 relates to this cover page or not.  
19 Q. I understand. Separating those two  
20 documents, just this delivery report, does this  
21 indicate to you that you sent a five-page fax to the  
22 people on this list?  
23 A. Yes.  
24 Q. On October 30th. And then if you could  
25 refer to the last column, STAT?

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1 A. Right.  
2 Q. What does that show?  
3 A. It is just an indication on whether the  
4 fax was received by another fax machine at the other  
5 end, so it is an abbreviation for successful  
6 transmission.  
7 Q. With regard to Mr. Nothern, the line with  
8 Mr. Nothern, does this document indicate to you or  
9 what does this document indicate to you with regard  
10 to whether the fax was sent through successfully?  
11 A. It says that it was successfully received  
12 by a fax machine at that phone number.  
13 Q. Sitting here today, do you have any  
14 recollection as to what this five-page fax contained?  
15 A. None.  
16 Q. I want to talk to you a little bit about  
17 the October 31st Treasury quarterly refunding  
18 conference, did you attend that conference?  
19 A. Yes.  
20 Q. What time did the conference start?  
21 A. 9:00 a.m.  
22 Q. Did you arrive on time?  
23 A. I was there early.  
24 Q. How early did you arrive?  
25 A. I don't know, 8:30, 8:40. I was there at

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| <p>1 least 15 or 20 minutes ahead of the meeting.</p> <p>2 Q. Where was the conference held?</p> <p>3 A. It was in a different room. And I forget</p> <p>4 which one. It was a bigger room. It's in this</p> <p>5 release, yeah, 33 -- 3311.</p> <p>6 Q. Had you attended any other conferences in</p> <p>7 room 3311?</p> <p>8 A. No.</p> <p>9 Q. You said it was a bigger room, could you</p> <p>10 describe the layout of the room?</p> <p>11 A. It was just a larger room, there was a</p> <p>12 podium set up in the front and there was theater</p> <p>13 seating with an aisle down the middle with seating</p> <p>14 for maybe 50 or 60 people.</p> <p>15 Q. What did you do when you arrived at 8:30?</p> <p>16 A. I moved to the front row and sat -- sat</p> <p>17 down.</p> <p>18 Q. Did you speak to anyone when you arrived</p> <p>19 before the meeting started?</p> <p>20 A. I might have. I -- the only specific</p> <p>21 recollection I have is that when Malvey came in with</p> <p>22 Fisher and there was not seating there, I remember</p> <p>23 talking to Paul and offering him a seat.</p> <p>24 Q. And I might have asked this, but just to</p> <p>25 clarify, how did you gain access to Treasury on</p>  | <p>1 Q. When the conference started, can you walk</p> <p>2 me through what happened generally at that</p> <p>3 conference?</p> <p>4 A. Lights and cameras came on, Peter Fisher</p> <p>5 read a statement, took some questions. There was an</p> <p>6 announcement that there would be an embargo before,</p> <p>7 and then there was a specific -- in fact, that's</p> <p>8 right, the embargo time was declared to be 10 o'clock</p> <p>9 before, and that was unusual, too. And that was the</p> <p>10 first I'd heard it. And then it was repeated at the</p> <p>11 end.</p> <p>12 Q. Just to clarify, did someone make a</p> <p>13 statement that the embargo time was 10:00 a.m.?</p> <p>14 A. Yes, the press officer, whoever it was,</p> <p>15 made a statement at the beginning of the meeting that</p> <p>16 this is embargoed until 10:00, and he repeated that</p> <p>17 at the end, which was really unusual because it had</p> <p>18 never happened before that there was an embargo time</p> <p>19 announced before the meeting.</p> <p>20 Q. Did you pick up any documents before the</p> <p>21 conference started?</p> <p>22 A. They eventually passed out documents</p> <p>23 shortly before it started.</p> <p>24 Q. Do you recall what those documents were.</p> <p>25 A. It was a standard press release. I don't</p> |
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| <p>1 October 31st?</p> <p>2 A. I called up as usual, I don't have a</p> <p>3 specific recollection as to whether it was to Lulu or</p> <p>4 not, and it was that phone number -- but I got</p> <p>5 cleared in. And when I went to get my badge that</p> <p>6 morning I was given a visitor's pass, which was</p> <p>7 different than what I had received at every other</p> <p>8 meeting. And I didn't question it, I just took the</p> <p>9 pass and went up to the room.</p> <p>10 Q. What did you usually receive at meetings</p> <p>11 instead of a visitor's pass?</p> <p>12 A. Usually it was a yellow official -- I</p> <p>13 forget what it said on it, but it was a different</p> <p>14 badge. I mean, it's not like I was just going to see</p> <p>15 the exhibits in the cash room or something, it was a</p> <p>16 badge.</p> <p>17 Q. When you arrived at Treasury, did someone</p> <p>18 come to greet you?</p> <p>19 A. No.</p> <p>20 Q. Where did you go once you arrived at the</p> <p>21 building on October 31st?</p> <p>22 A. Well, you go through security, you go to</p> <p>23 the officer who checks your I.D. and he sees me on</p> <p>24 the list, he gave me a visitor's pass. And then he</p> <p>25 buzzed me in, I was on my own to get up to the room</p> | <p>1 recall whether the rest of the materials that were</p> <p>2 usually released were released before or after -- you</p> <p>3 know, there was a standard packet of documents,</p> <p>4 advisory committee minutes and report and charts and</p> <p>5 so on.</p> <p>6 Q. You said that Mr. Fisher read a statement.</p> <p>7 A. Yes.</p> <p>8 Q. What was his statement about?</p> <p>9 A. It was the quarterly refunding</p> <p>10 announcement, but he had some additional remarks.</p> <p>11 And I don't really remember what they were. I mean,</p> <p>12 you know, something about sort of a general policy</p> <p>13 statement about Treasury debt management or something</p> <p>14 like that. I didn't focus on that part of it.</p> <p>15 Q. What, if anything, did Mr. Fisher's</p> <p>16 statement include regarding the 30-year bond?</p> <p>17 MR. THEODOROU: Objection.</p> <p>18 THE WITNESS: Mr. Fisher stated that</p> <p>19 Treasury would cease issuing the 30-year, it was not</p> <p>20 going to issue the 30-year as the market expected.</p> <p>21 BY MS. WILLIAMS:</p> <p>22 Q. Was this included in that statement that</p> <p>23 he read?</p> <p>24 A. Yes.</p> <p>25 Q. You said that they took questions after --</p>   |

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|--|---|
| <p>1 A. Yes, they did.</p> <p>2 Q. How long did Mr. Fisher speak before the</p> <p>3 questions?</p> <p>4 A. Well, the meeting started at like 9:02 or</p> <p>5 9:03 or something like that. And he started taking</p> <p>6 questions about -- I don't know, 9:15, 9:18,</p> <p>7 something like that. And my recollection -- I looked</p> <p>8 at my watch when I left and it was 9:30. And I'm</p> <p>9 very careful about making sure my watch is accurate,</p> <p>10 I always call up the national time clock.</p> <p>11 Q. Did you ask any questions during the</p> <p>12 October 31st --</p> <p>13 A. I raised my hand and almost did, and then</p> <p>14 I decided I was so angry about what they were doing</p> <p>15 that I just put my hand down and he called on</p> <p>16 somebody else.</p> <p>17 Q. Why were you angry about what they were</p> <p>18 doing?</p> <p>19 A. Because they were going to stick the</p> <p>20 taxpayers with roughly a billion dollars worth of</p> <p>21 interest expense by not issuing long bonds when</p> <p>22 interest rates were the lowest they had been in two</p> <p>23 generations since the Depression. And every other</p> <p>24 homeowner in the country was trying to lengthen their</p> <p>25 maturities to get lower payments, Treasury was doing</p>                 | <p>1 And so the last time, in my estimation,</p> <p>2 that the market expected the 30-year to be -- you</p> <p>3 know, expected the cessation of the 30-year was in</p> <p>4 the May or possibly in the August meeting. And by</p> <p>5 the October 31st meeting of 2001, the market had</p> <p>6 given up, just concluded that it doesn't make any</p> <p>7 sense for Treasury to get rid of it now.</p> <p>8 Over the summer, in fact, even earlier</p> <p>9 than that, in the spring and the summer, I had been</p> <p>10 one of the first people in Washington to say that the</p> <p>11 federal deficit was going straight up. And if the</p> <p>12 deficit is going straight up, the last thing you want</p> <p>13 to do is take away one of the ways to finance it,</p> <p>14 especially when interest rates are the lowest they've</p> <p>15 been in 70 years. And so it just made no sense and</p> <p>16 so I was pretty upset about it.</p> <p>17 Q. Did you think that this announcement that</p> <p>18 the 30-year bond was going to be cancelled would hav</p> <p>19 any impact on your clients?</p> <p>20 A. Sure.</p> <p>21 Q. And what kind of impact did you think it</p> <p>22 might have?</p> <p>23 MR. THEODOROU: Objection.</p> <p>24 THE WITNESS: I thought it might hurt</p> <p>25 them. I knew it was going to hurt the public, I</p> |
| Page 171   | Page 173  |
| <p>1 the opposite, which was creating an expense, a future</p> <p>2 expense when the shorter maturities rolled over,</p> <p>3 taxpayers today are now paying a lot more interest</p> <p>4 expense.</p> <p>5 Q. So what, if any, impact did you believe</p> <p>6 that the announcement that the 30-year bond would no</p> <p>7 longer be issued, what if any impact did you think</p> <p>8 that would have on the market?</p> <p>9 MR. THEODOROU: Objection.</p> <p>10 THE WITNESS: I anticipated it was going</p> <p>11 to surprise the market, that it was a total reversal</p> <p>12 of Treasury policy, that it was done for political</p> <p>13 reasons and I was just furious at what they were</p> <p>14 doing.</p> <p>15 BY MS. WILLIAMS:</p> <p>16 Q. Had you heard any rumors that the 30-year</p> <p>17 bond might be cancelled before you attended this --</p> <p>18 A. No, but there was a lot of speculation</p> <p>19 starting in early 2000 that they would. And I kept</p> <p>20 asking people and they kept saying the standard</p> <p>21 response. You know, several times Treasury officials</p> <p>22 told me in these meetings, and you know, for</p> <p>23 attribution later on and all that, that, you know, no</p> <p>24 change in policy, you know, we anticipate offering</p> <p>25 the 30-year.</p> | <p>1 impulsively warned people.</p> <p>2 BY MS. WILLIAMS:</p> <p>3 Q. Did you think that this announcement would</p> <p>4 have any effect on the price of the bond?</p> <p>5 A. Sure.</p> <p>6 Q. What kind of --</p> <p>7 A. Goes straight up, the biggest one day move</p> <p>8 in the 30-year in history of the country.</p> <p>9 Q. Did you take any notes during this</p> <p>10 conference?</p> <p>11 A. No, I had the materials in front -- at</p> <p>12 least not that I recall. I don't -- I don't recall</p> <p>13 taking any notes.</p> <p>14 Q. Let me ask you to look at this --</p> <p>15 A. Maybe, I don't know. It's a long time</p> <p>16 ago, I don't recall.</p> <p>17 Q. Let me ask you to look at what I'm going</p> <p>18 to have marked as Exhibit 26.</p> <p>19 (Davis Exhibit No. 26 was marked for</p> <p>20 identification.)</p> <p>21 THE WITNESS: Yes, I did take notes, this</p> <p>22 is my handwriting.</p> <p>23 BY MS. WILLIAMS:</p> <p>24 Q. You recognize the handwriting on this</p> <p>25 document?</p>  |

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Peter Davis, Jr.

Washington, DC

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|---|--|
| <p>1 A. It is my handwriting.</p> <p>2 Q. What date did you take these notes?</p> <p>3 A. It is dated 10/31/01.</p> <p>4 Q. Do you know where you were when you took</p> <p>5 these notes?</p> <p>6 A. 3311 U.S. Treasury Department.</p> <p>7 MR. STANCIL: Can I ask you a question?</p> <p>8 I'm sorry to interrupt.</p> <p>9 MS. WILLIAMS: Sure.</p> <p>10 MR. STANCIL: Does this go with other</p> <p>11 pages or --</p> <p>12 MS. WILLIAMS: This was the only page that</p> <p>13 I found.</p> <p>14 MR. STANCIL: Can we go off the record for</p> <p>15 one second?</p> <p>16 MS. WILLIAMS: Sure.</p> <p>17 THE VIDEOGRAPHER: Off the record at</p> <p>18 3:06:26 p.m.</p> <p>19 (Discussion off the record.)</p> <p>20 THE VIDEOGRAPHER: Back on the record at</p> <p>21 3:07:59 p.m.</p> <p>22 BY MS. WILLIAMS:</p> <p>23 Q. Mr. Davis, before we went off the record,</p> <p>24 I was asking you about what's been marked as Exhibit</p> <p>25 26.</p>                     | <p>1 Q. Peter Fisher was making the statement</p> <p>2 during the Wednesday quarterly refunding conference</p> <p>3 meeting?</p> <p>4 A. Correct.</p> <p>5 Q. Did you distribute these notes to anyone?</p> <p>6 A. No.</p> <p>7 Q. Did you use --</p> <p>8 A. Although I did -- I may have extracted</p> <p>9 some of the quotes in an E-mail to clients later on.</p> <p>10 In other words, I didn't just send out my notes, but,</p> <p>11 you know, I may have taken some of the quotations and</p> <p>12 put them into an E-mail to clients.</p> <p>13 MS. WILLIAMS: I'd like to have this</p> <p>14 marked as Exhibit 27.</p> <p>15 (Davis Exhibit No. 27 was marked for</p> <p>16 identification.)</p> <p>17 BY MS. WILLIAMS:</p> <p>18 Q. Do you recognize what's been marked as</p> <p>19 Exhibit 27?</p> <p>20 A. Yes, these are the written remarks of</p> <p>21 Undersecretary Peter Fisher on October 31st, 2001.</p> <p>22 Q. Do you know if you obtained a copy of this</p> <p>23 document on October 31st, 2001?</p> <p>24 A. Yes, this was passed out just prior to his</p> <p>25 making the remarks.</p>   |
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| <p>1 A. Um-hum.</p> <p>2 Q. You stated that these were handwritten</p> <p>3 notes that you took and that the document was dated</p> <p>4 10/31/01?</p> <p>5 A. Correct.</p> <p>6 Q. And as far as -- where were you when you</p> <p>7 took these notes?</p> <p>8 A. I was in the quarterly refunding meeting</p> <p>9 in room 3311 of the U.S. Treasury.</p> <p>10 Q. Can I refer you to the top right-hand</p> <p>11 corner of the notes?</p> <p>12 A. Yes.</p> <p>13 Q. What's written in the top right-hand</p> <p>14 corner?</p> <p>15 A. 10:00 a.m. embargo.</p> <p>16 Q. Did you take any of these notes before the</p> <p>17 conference started?</p> <p>18 A. No.</p> <p>19 Q. In the body of the document, I see some</p> <p>20 phrases, and I see some quotation marks, do you see</p> <p>21 those?</p> <p>22 A. Yes.</p> <p>23 Q. Do you know why there are certain things</p> <p>24 on this document that are in quotation marks?</p> <p>25 A. I was quoting Fisher.</p> | <p>1 Q. Did you -- were you able to read the</p> <p>2 document before Mr. Fisher made his remarks?</p> <p>3 A. It was passed out shortly before, so</p> <p>4 people were perusing it for a few seconds before he</p> <p>5 started.</p> <p>6 Q. Can I refer you to the top left-hand</p> <p>7 corner where it says for immediate release?</p> <p>8 A. Yes, it does say that.</p> <p>9 Q. Do you remember seeing that on the</p> <p>10 document?</p> <p>11 A. Yeah, I did.</p> <p>12 Q. Did that phrase on the top of the document</p> <p>13 have any -- or what -- what did that phrase for</p> <p>14 immediate release appearing on this document do to</p> <p>15 your understanding with regard to the embargo that</p> <p>16 you mentioned was announced on October 31st?</p> <p>17 A. It was confusing.</p> <p>18 Q. Did you understand that Mr. Fisher's</p> <p>19 remarks were embargoed?</p> <p>20 MR. THEODOROU: Objection.</p> <p>21 THE WITNESS: I believed that what the</p> <p>22 press official was telling me, that it was embargoed</p> <p>23 to 10:00, was the operative -- you know, there was</p> <p>24 operative -- but it's still confusing. It does say</p> <p>25 for immediate release.</p> |

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|---|---|
| <p>1 BY MS. WILLIAMS:</p> <p>2 Q. Did you believe that this release that you</p> <p>3 obtained before the meeting, this was also subject to</p> <p>4 the embargo?</p> <p>5 A. Yes.</p> <p>6 Q. I might have asked you this, but did you</p> <p>7 stay for the entire conference on October 31st?</p> <p>8 A. Yes.</p> <p>9 Q. What time did you say the conference ended</p> <p>10 that day?</p> <p>11 A. I looked at my watch when I walked out and</p> <p>12 it said 9:30. My phone records for some reason</p> <p>13 showed different times, but a few minutes earlier,</p> <p>14 but, you know, that was the time when I walked out of</p> <p>15 that meeting.</p> <p>16 Q. What did you do after the conference</p> <p>17 ended?</p> <p>18 A. I walked out of the building and down F</p> <p>19 Street to the end and called Ward McCarthy and other</p> <p>20 clients for about the next 20 minutes or so.</p> <p>21 Q. Did you speak to anyone before you left</p> <p>22 the building?</p> <p>23 A. No.</p> <p>24 Q. You stated that you walked down F Street</p> <p>25 and then you called clients?</p> | <p>1 to do it outside of the building.</p> <p>2 BY MS. WILLIAMS:</p> <p>3 Q. The embargo was in effect when you started</p> <p>4 calling your clients on October 31st?</p> <p>5 A. Yes, it was.</p> <p>6 Q. Did you call the clients in any particular</p> <p>7 order on that day?</p> <p>8 A. Yes, I did.</p> <p>9 Q. You mentioned Mr. McCarthy, did you call</p> <p>10 Mr. McCarthy first?</p> <p>11 A. Yes.</p> <p>12 Q. Who else did you call before the embargo</p> <p>13 expired on October 31st?</p> <p>14 A. I'd have to see my phone records to be</p> <p>15 sure, but you know, I went down my usual list,</p> <p>16 starting with Ward.</p> <p>17 Q. Besides Mr. McCarthy, do you recall anyone</p> <p>18 else that you called?</p> <p>19 A. Well, I know I talked to Bill Cohen, Capra</p> <p>20 C-a-p-r-a, Asset Management. And I remember I talked</p> <p>21 to John Youngdahl at Goldman. There were others, but</p> <p>22 I don't have a clear recollection. It's in my phone</p> <p>23 records, I mean, you know, I can -- if I saw my phone</p> <p>24 records, I could tell you exactly who I talked to.</p> <p>25 Q. Okay. Did you call Mr. Nothorn before the</p> |
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| <p>1 A. Right.</p> <p>2 Q. What did you use to make these phone</p> <p>3 calls?</p> <p>4 A. I had a cell phone.</p> <p>5 Q. Can you tell me what the number of your</p> <p>6 cell phone was?</p> <p>7 A. I don't remember.</p> <p>8 Q. Do you know who provided your cell phone</p> <p>9 service at that time?</p> <p>10 A. My lawyer has all that information, I -- I</p> <p>11 don't -- I don't remember it now, that was a long</p> <p>12 time ago.</p> <p>13 Q. Was anyone present when you made these</p> <p>14 calls?</p> <p>15 A. No.</p> <p>16 Q. Why did you --</p> <p>17 A. I mean, I was -- I was sitting on a bench</p> <p>18 in front of Borders bookstore at 14th and F, I mean,</p> <p>19 there were people walking by and trucks and cars</p> <p>20 driving by.</p> <p>21 Q. Why did you leave the Treasury building</p> <p>22 before you called clients?</p> <p>23 MR. THEODOROU: Objection.</p> <p>24 THE WITNESS: I just did. You know, I was</p> <p>25 warning people before the embargo time, I was going</p>  | <p>1 embargo expired on October 31st?</p> <p>2 A. Yes.</p> <p>3 MR. THEODOROU: Objection.</p> <p>4 THE WITNESS: But I didn't reach him.</p> <p>5 BY MS. WILLIAMS:</p> <p>6 Q. But you left a voicemail?</p> <p>7 A. I did leave a voicemail.</p> <p>8 Q. I would like to have it marked as Exhibit</p> <p>9 28.</p> <p>10 (Davis Exhibit No. 28 was marked for</p> <p>11 identification.)</p> <p>12 BY MS. WILLIAMS:</p> <p>13 Q. Do you recognize this document, sir?</p> <p>14 A. Yes, it is a list of the phone calls of</p> <p>15 that morning.</p> <p>16 Q. When you say of that morning, what morning</p> <p>17 are you referring to?</p> <p>18 A. October 31st, 2001.</p> <p>19 Q. Whose handwriting is this?</p> <p>20 A. It's my handwriting.</p> <p>21 Q. Did you prepare the document yourself?</p> <p>22 A. I must have. I think I was copying my</p> <p>23 phone records for some reason.</p> <p>24 Q. Does Mr. Nothorn's name appear on this</p> <p>25 list?</p>  |

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|---|---|
| <p>1 A. Yes.</p> <p>2 Q. Where does his name appear?</p> <p>3 A. Seventh call. On the phone records, they</p> <p>4 show 9:38. I think it was actually a little later</p> <p>5 than that.</p> <p>6 Q. Why --</p> <p>7 A. And it says, and it says his phone</p> <p>8 number -- it says Boston, his phone number, Steve</p> <p>9 Nothorn and dash message.</p> <p>10 Q. You said the phone records indicate the</p> <p>11 call was made at 9:38?</p> <p>12 A. Right.</p> <p>13 Q. But you thought it was later than that?</p> <p>14 A. Well, I mean, the phone record showed that</p> <p>15 I called Ward at 9:28, but I didn't leave the</p> <p>16 building until at least 9:33 or 9:34 or so. I've</p> <p>17 never been able to understand that discrepancy.</p> <p>18 Q. But were you looking at your phone records</p> <p>19 when you made this document?</p> <p>20 A. Yes. I forget the company, but every</p> <p>21 month I would get a bill, and it would have the phone</p> <p>22 records. So, you know, I copied those down.</p> <p>23 Q. Do you know when you prepared this</p> <p>24 document?</p> <p>25 MR. STANCIL: Do you have a specific</p> | <p>1 A. Oh, okay, there is a phone record for</p> <p>2 November 19, right.</p> <p>3 Q. What was -- do you believe -- do you see</p> <p>4 your name on this 114193, and I'm near the bottom of</p> <p>5 the page?</p> <p>6 A. Yes.</p> <p>7 Q. Do you believe this is a copy of the phone</p> <p>8 bill that you received from Verizon Wireless?</p> <p>9 A. Yes.</p> <p>10 Q. November 2001?</p> <p>11 A. Yes, um-hum.</p> <p>12 Q. And if you could turn to the next page,</p> <p>13 114194.</p> <p>14 A. Um-hum.</p> <p>15 Q. Do you recall if your cell phone number in</p> <p>16 October of 2001 was 202-365-7624?</p> <p>17 A. Yes. Actually, that's still my current</p> <p>18 one. For some reason, I thought that phone had died</p> <p>19 and I had gotten another number. I guess not.</p> <p>20 Q. I'd like to refer you to line 21, the</p> <p>21 lines go down the left-hand side of the page.</p> <p>22 A. Sure, I see it.</p> <p>23 Q. What does the line 21 reflect?</p> <p>24 A. It says there was a phone call at 9:38 to</p> <p>25 Boston, Massachusetts.</p>  |
| Page 183  | Page 185  |
| <p>1 recollection?</p> <p>2 THE WITNESS: I don't have a clear</p> <p>3 recollection, but I must have done it for my</p> <p>4 attorneys soon thereafter. I don't know when.</p> <p>5 BY MS. WILLIAMS:</p> <p>6 Q. In 2001?</p> <p>7 A. Yes. I contacted attorneys a few days</p> <p>8 later.</p> <p>9 Q. A few days after October 31st, 2001?</p> <p>10 A. Right, right.</p> <p>11 Q. Was it your understanding that the</p> <p>12 information that you had obtained at the October 31st</p> <p>13 meeting was still embargoed at 9:38?</p> <p>14 MR. THEODOROU: Objection.</p> <p>15 THE WITNESS: Yes.</p> <p>16 BY MS. WILLIAMS:</p> <p>17 Q. You mentioned your phone records, and I</p> <p>18 want to have this document marked as Exhibit 29.</p> <p>19 (Davis Exhibit No. 29 was marked for</p> <p>20 identification.)</p> <p>21 BY MS. WILLIAMS:</p> <p>22 Q. Do you recognize this document?</p> <p>23 A. It's a Verizon Wireless phone bill with a</p> <p>24 billing date of October 19th, 2001.</p> <p>25 Q. And if you refer to SEC NOTH 00114193.</p>  | <p>1 Q. Do you recognize that phone number?</p> <p>2 A. It's Steve Nothorn's phone number at MFS.</p> <p>3 Q. And the call was two minutes, do you --</p> <p>4 A. Yeah, um, it took a number of rings to get</p> <p>5 to a voicemail, and it may have flipped to another</p> <p>6 number to get to a voicemail, I don't know. It took</p> <p>7 a while to get the voicemail and that's why it ran</p> <p>8 over.</p> <p>9 Q. What did you say in the voicemail that you</p> <p>10 left for Mr. Nothorn?</p> <p>11 MR. THEODOROU: Objection.</p> <p>12 THE WITNESS: I have a clear recollection</p> <p>13 of saying that they are going to kill the 30-year,</p> <p>14 but I don't have any recollection of mentioning an</p> <p>15 embargo time.</p> <p>16 BY MS. WILLIAMS:</p> <p>17 Q. Do you believe you may have mentioned it</p> <p>18 and you don't recall?</p> <p>19 MR. THEODOROU: Objection, that's not what</p> <p>20 he said.</p> <p>21 THE WITNESS: No, I --</p> <p>22 MS. WILLIAMS: I asked the question.</p> <p>23 MR. THEODOROU: Correct.</p> <p>24 BY MS. WILLIAMS:</p> <p>25 Q. Right. Do you believe you may have</p> |

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|--|---|
| <p>1 mentioned it, but you do not recall is the question?</p> <p>2 MR. THEODOROU: Objection.</p> <p>3 BY MS. WILLIAMS:</p> <p>4 Q. You can answer.</p> <p>5 A. I don't have any recollection of leaving</p> <p>6 an embargo time on that phone message. It was a</p> <p>7 quick call, the two minutes mostly reflects the</p> <p>8 amount of time that it took to get through to the</p> <p>9 voicemail. And I was on to the next call, so --</p> <p>10 Q. What, if anything, else do you remember</p> <p>11 about leaving him that message?</p> <p>12 MR. STANCIL: Can we take a quick break,</p> <p>13 Erica?</p> <p>14 MS. WILLIAMS: As soon as he answers that</p> <p>15 question, sure.</p> <p>16 THE WITNESS: Nothing.</p> <p>17 THE VIDEOGRAPHER: Off the record at</p> <p>18 3:23:38 p.m.</p> <p>19 (Recess.)</p> <p>20 THE VIDEOGRAPHER: Back on the record at</p> <p>21 3:31:02 p.m.</p> <p>22 MR. STANCIL: Erica, if you'll indulge me,</p> <p>23 the reason I stopped, I wanted to give Mr. Davis an</p> <p>24 opportunity to make sure that he is perfectly clear.</p> <p>25 This has obviously been something that's taken a lot</p>   | <p>1 Q. I would like to have this document marked</p> <p>2 as Exhibit 30.</p> <p>3 MR. THEODOROU: For the record, thank you</p> <p>4 Mark.</p> <p>5 (Davis Exhibit No. 30 was marked for</p> <p>6 identification.)</p> <p>7 BY MS. WILLIAMS:</p> <p>8 Q. Mr. Davis, I'm going to ask you questions</p> <p>9 starting with the subject, do you see subject in the</p> <p>10 middle of that -- not the middle, a fourth -- a</p> <p>11 quarter of the way down that first page? I'm going</p> <p>12 to ask questions about what appears below that, and</p> <p>13 then continuing on to the next page. Do you</p> <p>14 recognize that portion of the document that's been</p> <p>15 marked as Exhibit 30?</p> <p>16 A. Can I ask my counsel something?</p> <p>17 MR. STANCIL: Take a break.</p> <p>18 THE VIDEOGRAPHER: Off the record at</p> <p>19 3:33:26 p.m.</p> <p>20 (Recess.)</p> <p>21 THE VIDEOGRAPHER: Back on the record at</p> <p>22 3:40:26 p.m.</p> <p>23 BY MS. WILLIAMS:</p> <p>24 Q. Mr. Davis, before we went on a break, I</p> <p>25 was asking you about Exhibit 30.</p> |
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| <p>1 of his -- consumed a large portion of his life. And</p> <p>2 I want to make sure that he's perfectly clear on the</p> <p>3 record with his answers to your last question. So I</p> <p>4 don't know if you want to ask it again, or I can ask</p> <p>5 him a question, but I just want to make sure there is</p> <p>6 no ambiguity on the record in terms of his</p> <p>7 recollection.</p> <p>8 MS. WILLIAMS: I don't recall what my</p> <p>9 question is. If you could ask him the question to</p> <p>10 clarify, that would be helpful.</p> <p>11 MR. STANCIL: Pete, sitting here today,</p> <p>12 what's your recollection of what you left on the</p> <p>13 voicemail for Mr. Nothorn on October 31st, 2001?</p> <p>14 THE WITNESS: The only clear recollection</p> <p>15 I have is, Steve, they are killing the 30-year -- you</p> <p>16 know, this is four and a half years after the fact,</p> <p>17 so a long time after. And I don't have a</p> <p>18 recollection of leaving an embargo time on the</p> <p>19 message. I can't -- I can't be 100 percent sure I</p> <p>20 didn't. But to the best of my recollection, I did</p> <p>21 not leave the embargo time.</p> <p>22 MS. WILLIAMS: I'd like to have this</p> <p>23 document -- thanks, Mark.</p> <p>24 MR. STANCIL: Sure.</p> <p>25 BY MS. WILLIAMS:</p> | <p>1 A. Right.</p> <p>2 Q. And I don't recall if we answered the</p> <p>3 question, but do you recognize this document? And</p> <p>4 I'm really starting with the first page starting with</p> <p>5 subject all the way through to the second page?</p> <p>6 A. Yes, I do recognize it.</p> <p>7 Q. What is it?</p> <p>8 A. It is a memo I wrote to my attorneys on</p> <p>9 November 5th of 2001.</p> <p>10 Q. Do you see the second page of the document</p> <p>11 where it says redacted, do you know -- do you see</p> <p>12 that?</p> <p>13 A. Yeah.</p> <p>14 Q. Do you know who did that redaction?</p> <p>15 A. I have no idea.</p> <p>16 Q. You did not do that redaction?</p> <p>17 A. No, no redaction is shown. I mean, is</p> <p>18 something at the bottom crossed out, you mean?</p> <p>19 Q. Yes.</p> <p>20 A. I have no idea what was down there.</p> <p>21 Q. What's the date of this document?</p> <p>22 A. It says November 5th, 2001. It looks like</p> <p>23 an E-mail.</p> <p>24 Q. An E-mail from who?</p> <p>25 A. From me to my attorneys at 4:39 in the</p>      |

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| <p>1 afternoon.</p> <p>2 Q. And what does this E-mail contain?</p> <p>3 A. It says I called the Verizon Wireless</p> <p>4 people and they read to me my phone calls of October</p> <p>5 31 before 10:00 a.m. And I, further down, recorded</p> <p>6 the time and the phone number and the place and who</p> <p>7 talked to, and some notes about what transpired in</p> <p>8 the conversation.</p> <p>9 Q. Independent of this document, do you</p> <p>10 recall having a conversation with Verizon in which</p> <p>11 they read your phone calls to you?</p> <p>12 A. Yeah. I called Verizon to -- I hadn't</p> <p>13 received my bill yet, and I had gone to my attorneys</p> <p>14 seeking counsel. And I called Verizon and got the</p> <p>15 information over the phone.</p> <p>16 Q. Can you look down -- and I'm starting with</p> <p>17 what's remarked as 9:28 a.m., do you see 9:28 a.m.?</p> <p>18 A. Yes.</p> <p>19 Q. That second line where it starts,</p> <p>20 "McCarthy 10:00 a.m. embargo," and then I see</p> <p>21 detailed conversation. Where did that part, the</p> <p>22 detailed conversation part of the E-mail come from?</p> <p>23 A. What do you mean?</p> <p>24 Q. Did that -- did you --</p> <p>25 A. I wrote detailed conversation.</p> | <p>1 it might have -- well, I mean, that's the main point.</p> <p>2 BY MS. WILLIAMS:</p> <p>3 Q. You also wrote in that paragraph, "10:00</p> <p>4 a.m. embargo," do you see that?</p> <p>5 A. I see that, yeah.</p> <p>6 Q. Was this document drafted when the events</p> <p>7 of October 31st, 2001 were fresh in your mind?</p> <p>8 MR. THEODOROU: Objection.</p> <p>9 THE WITNESS: Yes.</p> <p>10 BY MS. WILLIAMS:</p> <p>11 Q. Do you believe the information in this</p> <p>12 document is accurate?</p> <p>13 MR. THEODOROU: Objection.</p> <p>14 THE WITNESS: Yes.</p> <p>15 MR. STANCIL: Pete, let me make clear,</p> <p>16 because this is something we focused on before. Does</p> <p>17 this document change your recollection sitting here</p> <p>18 today or do you believe it was accurate at the time</p> <p>19 that you wrote it?</p> <p>20 THE WITNESS: It doesn't change my</p> <p>21 recollection today. When I prepared this document,</p> <p>22 that was the best of my recollection then. And, you</p> <p>23 know, what I'm saying now is the best of my</p> <p>24 recollection now, four and a half years later.</p> <p>25 MS. WILLIAMS: I understand.</p>              |
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| <p>1 Q. So there's information contained in this</p> <p>2 that you did not receive from the Verizon -- phone</p> <p>3 call with Verizon that you had?</p> <p>4 A. I'm saying I took the information I got</p> <p>5 from Verizon which was time, phone number, city and</p> <p>6 supplied additional information, like who it was and</p> <p>7 other information about the call. So the time, the</p> <p>8 phone number and the city came from Verizon, I</p> <p>9 supplied the rest of the information.</p> <p>10 Q. Could you turn to the second page of this</p> <p>11 document at the top?</p> <p>12 A. Yes.</p> <p>13 Q. Could you tell me what is reflected in</p> <p>14 that first, I'll call it paragraph at the top?</p> <p>15 A. It says, "9:38, (617) 954-5887, Boston,</p> <p>16 Mass, didn't get through to Steve Nothern at Mass</p> <p>17 Financial Services, left a short message, 10:00 a.m.</p> <p>18 embargo and main points."</p> <p>19 Q. Is (617) 954-5887, was that Mr. Nothern's</p> <p>20 phone number?</p> <p>21 A. Yes, his phone number at work at</p> <p>22 Massachusetts Financial Services.</p> <p>23 Q. What do you mean by main points?</p> <p>24 MR. THEODOROU: Objection.</p> <p>25 THE WITNESS: They killed the 30-year and</p>      | <p>1 BY MS. WILLIAMS:</p> <p>2 Q. But do you believe that what you wrote in</p> <p>3 this document to your attorneys was accurate at the</p> <p>4 time that you wrote it?</p> <p>5 MR. THEODOROU: Objection.</p> <p>6 THE WITNESS: It was the best of my</p> <p>7 recollection at the time.</p> <p>8 BY MS. WILLIAMS:</p> <p>9 Q. So at the time, you believed that you had</p> <p>10 mentioned the 10:00 a.m. embargo to Mr. Nothern?</p> <p>11 MR. THEODOROU: Objection.</p> <p>12 BY MS. WILLIAMS:</p> <p>13 Q. At the time you wrote this document?</p> <p>14 MR. THEODOROU: Objection.</p> <p>15 MR. STANCIL: I'm going to object, too.</p> <p>16 My client's interest is to answer each question one</p> <p>17 time, and you know, I don't think it is fair to</p> <p>18 repeat the same question over and over again.</p> <p>19 MS. WILLIAMS: I understand. I just want</p> <p>20 to clarify the record on this particular point.</p> <p>21 MR. STANCIL: What's the question now?</p> <p>22 BY MS. WILLIAMS:</p> <p>23 Q. The question is, at the time you wrote</p> <p>24 this document, was it your understanding that you</p> <p>25 mentioned a 10:00 a.m. embargo to Mr. Nothern?</p> |

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|--|--|
| <p>1 MR. THEODOROU: Objection.</p> <p>2 THE WITNESS: That's what this memo says.</p> <p>3 BY MS. WILLIAMS:</p> <p>4 Q. So yes?</p> <p>5 MR. THEODOROU: Objection.</p> <p>6 MR. STANCIL: I object, too. I mean, I</p> <p>7 don't know that you've established that he has a</p> <p>8 recollection today about what he thought at the time.</p> <p>9 He's testified this is the best his recollection at</p> <p>10 the time.</p> <p>11 MS. WILLIAMS: Right, and I'm talking</p> <p>12 about --</p> <p>13 MR. THEODOROU: That's correct.</p> <p>14 MS. WILLIAMS: -- he wrote this document.</p> <p>15 He said that this document was written when it was</p> <p>16 fresh in his mind.</p> <p>17 MR. THEODOROU: Objection to that.</p> <p>18 MS. WILLIAMS: And that the information in</p> <p>19 this document was accurate. So I'm just trying to</p> <p>20 clarify if this information, "10:00 a.m. embargo,"</p> <p>21 does he believe that that was accurate at the time he</p> <p>22 wrote this document.</p> <p>23 MR. STANCIL: And my objection is that he</p> <p>24 can only tell what you he knows now. And I don't --</p> <p>25 my concern is that your question suggests that he's</p>            | <p>1 THE WITNESS: I would point out that it</p> <p>2 was my recollection then.</p> <p>3 MS. WILLIAMS: Right.</p> <p>4 THE WITNESS: And you know, it was a</p> <p>5 recollection of something that happened in a very</p> <p>6 compressed period of time. And I was upset, there</p> <p>7 were newspaper articles coming out and that was the</p> <p>8 best of my recollection at that time. And that's all</p> <p>9 I can say.</p> <p>10 MS. WILLIAMS: Okay.</p> <p>11 BY MS. WILLIAMS:</p> <p>12 Q. Did you have any reason to put anything in</p> <p>13 this document that was not accurate at the time that</p> <p>14 you wrote it?</p> <p>15 MR. THEODOROU: Objection.</p> <p>16 MR. STANCIL: To the extent you remember.</p> <p>17 THE WITNESS: I put down in this memo to</p> <p>18 the best of my recollection at that time.</p> <p>19 BY MS. WILLIAMS:</p> <p>20 Q. Do you know if your attorneys received</p> <p>21 this document?</p> <p>22 A. Yes.</p> <p>23 Q. Did you have any conversations with your</p> <p>24 attorneys about the document?</p> <p>25 MR. THEODOROU: Objection.</p>  |
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| <p>1 vouching for the accuracy of the document or the</p> <p>2 non-accuracy of the document. He's testified that</p> <p>3 this would have been the best of his recollection at</p> <p>4 the time, and he's given you the best of his</p> <p>5 recollection today. And I don't think he can do</p> <p>6 anything more for you.</p> <p>7 MS. WILLIAMS: Right.</p> <p>8 MR. THEODOROU: My objection is that he</p> <p>9 has no present recollection. And you've asked him as</p> <p>10 to whether it refreshed his memory, and it doesn't</p> <p>11 refresh his memory.</p> <p>12 MS. WILLIAMS: I actually never asked that</p> <p>13 question.</p> <p>14 MR. THEODOROU: I noticed that, because</p> <p>15 you know the answer will be no.</p> <p>16 MS. WILLIAMS: Because I'm really trying</p> <p>17 to -- what I'm trying to establish is his -- the</p> <p>18 accuracy of this particular document. I'm really not</p> <p>19 asking about what you recall today, Mr. Davis.</p> <p>20 MR. THEODOROU: Well --</p> <p>21 MR. STANCIL: All he can tell you is</p> <p>22 what --</p> <p>23 MR. THEODOROU: I'm objecting.</p> <p>24 MR. STANCIL: All he can tell you is what</p> <p>25 he recalls today.</p> | <p>1 MR. STANCIL: We've waived privilege with</p> <p>2 respect to the Southern District and these</p> <p>3 proceedings. There's going to be a point at which I</p> <p>4 am going to have to stop you. I mean, we have waived</p> <p>5 privilege with respect to certain documents, but not</p> <p>6 a blanket waiver of any and all conversations that</p> <p>7 he's had with us. So I'd ask you to stick to the</p> <p>8 document.</p> <p>9 BY MS. WILLIAMS:</p> <p>10 Q. Can I refer you to the first page of the</p> <p>11 document again?</p> <p>12 A. Yes.</p> <p>13 Q. We already went through 9:28. Can we go</p> <p>14 to 9:32, do you see that on the first page?</p> <p>15 A. Yes, that's (914) 925-7707, Rye, New York.</p> <p>16 And then I added that I had talked to Bill Cohen of</p> <p>17 Capra Asset Management.</p> <p>18 Q. Do you --</p> <p>19 A. I'm reading the rest of it. It says,</p> <p>20 "10:00 a.m. embargo, detailed conversation."</p> <p>21 Q. Do you have a recollection today of</p> <p>22 talking to Mr. Cohen?</p> <p>23 A. Yeah, but I don't recall whether I</p> <p>24 mentioned the embargo to him. I mean, this was a</p> <p>25 long time ago. I --</p> |

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| <p>1 Q. Okay.</p> <p>2 A. Look, I'm real clear that I mentioned to</p> <p>3 him that the 30-year had been killed. But I mean,</p> <p>4 I'm fuzzy about what else happened in the</p> <p>5 conversation. You know, these were short phone calls</p> <p>6 of like a minute, and I was going one after the</p> <p>7 other.</p> <p>8 So, you know, it is not like my short-term</p> <p>9 memory was able to just rest after each phone call</p> <p>10 and engrave itself in my mind. I was talking to one</p> <p>11 person after another, and so things tended to blur</p> <p>12 together. You know, I had a general intention to</p> <p>13 mention the embargo time, but I can't be sure I</p> <p>14 always did. And this is the best of my recollection</p> <p>15 on November 5th, 2001, and I've already told you what</p> <p>16 my recollection is now.</p> <p>17 Q. Just to clarify, do you recall if you</p> <p>18 actually had a conversation with Mr. Cohen when you</p> <p>19 called at 9:32?</p> <p>20 A. I did talk to Bill.</p> <p>21 Q. Then it says 9:33, is this a call to Chris</p> <p>22 Long?</p> <p>23 A. It may have been, I don't know for sure</p> <p>24 who I talked to.</p> <p>25 Q. And you don't have a -- do you have any</p>   | <p>1 mean, I just don't have any other recollection of</p> <p>2 that call.</p> <p>3 BY MS. WILLIAMS:</p> <p>4 Q. Let me just ask about one more. 9:35,</p> <p>5 John Youngdahl of Goldman Sachs, do you see that</p> <p>6 written?</p> <p>7 A. Yes, I do.</p> <p>8 Q. Do you recall having a conversation with</p> <p>9 Mr. Youngdahl on October 31st?</p> <p>10 A. Yes, I do.</p> <p>11 Q. And it looks from this record like that</p> <p>12 conversation may have lasted two minutes because the</p> <p>13 next call was at 9:37, do you recall how long --</p> <p>14 A. You have to be careful about how the phone</p> <p>15 company keeps records. I'm not sure that they keep</p> <p>16 the records in a way that you could have a situation</p> <p>17 where on the last second of the previous minute until</p> <p>18 the next second after the next minute, it might</p> <p>19 record as two or even three minutes, but it's</p> <p>20 actually a one-minute call. So, you know, it was</p> <p>21 a call. I remember talking with Youngdahl, and I</p> <p>22 remember we had a detailed conversation, but you</p> <p>23 know, it could have been a minute, it could have been</p> <p>24 two.</p> <p>25 Q. Do you remember mentioning the 10:00 a.m.</p> |
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| <p>1 recollection today about that call?</p> <p>2 A. None. I don't have any recollection.</p> <p>3 Mainly -- I mean, the recollections depend on how</p> <p>4 well I knew the people before I called them. And so</p> <p>5 obviously, I knew Ward well and, you know, obviously</p> <p>6 I was going have a detailed conversation with him.</p> <p>7 And the same with Bill. I have no idea who Chris</p> <p>8 Long is, I've never met him.</p> <p>9 Q. And then the next line says 9:34, so one</p> <p>10 minute later, and it says at the end, "don't know who</p> <p>11 I talked to." Do you see that?</p> <p>12 A. Right. Yes, I do. That's not uncommon</p> <p>13 when you call people at a financial management firm,</p> <p>14 if you're talking to the trading desk, you call a</p> <p>15 number, and you don't even know who you get.</p> <p>16 Sometimes they'll say who it is, sometimes they</p> <p>17 don't. They are pressed for time, too. They just</p> <p>18 pick it up and that's it.</p> <p>19 Q. Do you believe you had a conversation --</p> <p>20 or do you recall having a conversation with someone</p> <p>21 at SAC, even if you don't remember who it was?</p> <p>22 MR. THEODOROU: Objection.</p> <p>23 THE WITNESS: I mean, I remember calling</p> <p>24 SAC. I have no recollection of who I talked to or</p> <p>25 much beyond, you know, the 30-year is killed. I</p> | <p>1 embargo to Mr. Youngdahl?</p> <p>2 A. I do remember in his case, and the reason</p> <p>3 was that he was a new client. And I have a -- have a</p> <p>4 specific recollection now, and then, when I wrote</p> <p>5 this memo, that I had mentioned the embargo time to</p> <p>6 him, because he hadn't really received a call like</p> <p>7 this before except in the August, I had called him.</p> <p>8 But I'm not sure he understood what it was.</p> <p>9 Q. Do you know if there are any -- sure, can</p> <p>10 we take a short break?</p> <p>11 THE VIDEOGRAPHER: Off the record at</p> <p>12 3:54:47 p.m.</p> <p>13 (Discussion off the record.)</p> <p>14 THE VIDEOGRAPHER: Back on the record at</p> <p>15 3:59:45 p.m.</p> <p>16 BY MS. WILLIAMS:</p> <p>17 Q. Mr. Davis, before we went off the record,</p> <p>18 I was asking you about Exhibit 30, and we were</p> <p>19 talking specifically about the line, 9:35, where</p> <p>20 Mr. Youngdahl's name is mentioned?</p> <p>21 A. Correct.</p> <p>22 Q. You said at this time, in October of 2001,</p> <p>23 Mr. Youngdahl was a new client?</p> <p>24 A. Correct.</p> <p>25 Q. Which is one of the reasons you mentioned</p>   |

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| <p>1 the embargo.</p> <p>2 A. Correct.</p> <p>3 Q. Can I refer you back to what's been marked</p> <p>4 as Exhibit 17, your plea agreement?</p> <p>5 A. Um-hum.</p> <p>6 Q. Not plea agreement, your plea sentencing</p> <p>7 transcript.</p> <p>8 A. Right.</p> <p>9 MR. THEODOROU: Plea colloquy?</p> <p>10 BY MS. WILLIAMS:</p> <p>11 Q. And I'm on SEC NOTH 00145748.</p> <p>12 A. Yes.</p> <p>13 Q. Can you first refer to line 5 of that</p> <p>14 page, starting with the word specifically, do you see</p> <p>15 that?</p> <p>16 A. Yes.</p> <p>17 Q. "Specifically, in May of 2001, I made such</p> <p>18 a call to John Youngdahl, a vice president and senior</p> <p>19 economist at Goldman Sachs. Mr. Youngdahl was a new</p> <p>20 client and I hoped that the pre-embargo refunding</p> <p>21 information would persuade him to remain a client."</p> <p>22 And then it goes on, line 10, "on July</p> <p>23 12th, 2001, I received an E-mail from Mr. Youngdahl</p> <p>24 in which Mr. Youngdahl acknowledged that I had</p> <p>25 provided him with pre-embargo information, relating</p>  | <p>1 and so --</p> <p>2 Q. You had specifically talked about what?</p> <p>3 A. That I would call him up before the</p> <p>4 embargo time.</p> <p>5 Q. Can you turn to page 145749 of that</p> <p>6 transcript?</p> <p>7 A. Yes.</p> <p>8 Q. I am at line 11 at the very end, I --</p> <p>9 starting with I, just the word I, do you see that?</p> <p>10 It's line 11 at the very end.</p> <p>11 A. Yeah, I see it.</p> <p>12 Q. "I told Mr. Youngdahl that Treasury had</p> <p>13 decided to discontinue the 30-year bond. I also told</p> <p>14 Mr. Youngdahl that the information was embargoed</p> <p>15 until 10:00 a.m. My call to him took place around</p> <p>16 9:30 a.m. My expectation was that Mr. Youngdahl and</p> <p>17 Goldman Sachs would use the information to their</p> <p>18 advantage in trading government securities."</p> <p>19 Do you recall -- do you agree that that</p> <p>20 was your expectation in providing Mr. Youngdahl with</p> <p>21 this information?</p> <p>22 A. Yes.</p> <p>23 Q. So you did not expect Mr. Youngdahl to</p> <p>24 obey the 10:00 a.m. embargo?</p> <p>25 MR. THEODOROU: Objection.</p>                                 |
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| <p>1 to the May 2001 refunding press conference. In that</p> <p>2 E-mail, Mr. Youngdahl also asked me if I would give</p> <p>3 pre-embargo information to him as a 'routine matter'</p> <p>4 beginning with the August 1st, 2001 quarterly</p> <p>5 refunding press conference."</p> <p>6 Did I read that correctly?</p> <p>7 A. Yes.</p> <p>8 Q. So in October of 2001, was</p> <p>9 Mr. Youngdahl -- did you still consider him to be a</p> <p>10 new client?</p> <p>11 A. Yes.</p> <p>12 Q. But you had entered into an agreement with</p> <p>13 him to provide him with pre-embargo information?</p> <p>14 A. Yes.</p> <p>15 Q. Do you know why you would have written on</p> <p>16 here that you mentioned the 10:00 a.m. embargo to</p> <p>17 him, because you said you recall mentioning it to</p> <p>18 him?</p> <p>19 A. Even though this had occurred before in</p> <p>20 August and before in May, I still have a strong</p> <p>21 recollection now, and obviously had one then, that I</p> <p>22 had mentioned the embargo time to him.</p> <p>23 Q. Do you know why?</p> <p>24 A. Because he was a new client, he was</p> <p>25 someone that we had specifically talked about this,</p> | <p>1 THE WITNESS: I don't -- I don't -- yeah,</p> <p>2 I mean, that's what I said.</p> <p>3 BY MS. WILLIAMS:</p> <p>4 Q. I want to continue. "I believe that once</p> <p>5 this information became public, prices of the 30-year</p> <p>6 bond would escalate dramatically, and I knew my</p> <p>7 pre-embargo" -- I believe that should have been</p> <p>8 report --</p> <p>9 A. Yes, there is a typo there in line 19.</p> <p>10 Q. "Would allow Mr. Young" -- I think that</p> <p>11 should be "dahl"?</p> <p>12 A. Right.</p> <p>13 Q. "And my other clients to make significant</p> <p>14 moves in advance of the market responding to the</p> <p>15 official public release," do you see that?</p> <p>16 A. Yes, I do.</p> <p>17 Q. Do you believe that that statement was</p> <p>18 accurate when you made it at the plea hearing?</p> <p>19 A. Yes.</p> <p>20 Q. So you expected that this information</p> <p>21 would allow Mr. Youngdahl and other clients to make</p> <p>22 significant moves in the advance of the market</p> <p>23 responding?</p> <p>24 A. Well, I mean, my recollection today of</p> <p>25 what I was thinking on October 31st was that they</p> |

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| <p>1 would be ready to act right at 10:00 a.m. before<br/> 2 anybody. Now, obviously if they get the information<br/> 3 before 10:00, they can act before, I have no idea.<br/> 4 You know, obviously, the reason for telling them the<br/> 5 embargo time was that they could possibly wait and<br/> 6 act right at 10:00 a.m. And that was, you know, my<br/> 7 expectation. But they could clearly -- you know,<br/> 8 once they have the information, obviously they could<br/> 9 use it, sure.<br/> 10 Q. And they could use it to make moves in<br/> 11 advance of the market's responding?<br/> 12 A. Yes, they could, sure. Yes, that was<br/> 13 true.<br/> 14 Q. You state in this plea hearing, "my other<br/> 15 clients," did that include Mr. Nothern, that you<br/> 16 expected this information would help Mr. Nothern make<br/> 17 significant moves in advance of the market<br/> 18 responding?<br/> 19 MR. THEODOROU: Objection.<br/> 20 THE WITNESS: I never got a hold of<br/> 21 Mr. Nothern, so I didn't have any expectation. I<br/> 22 mean, obviously, I called him and left a phone<br/> 23 message.<br/> 24 BY MS. WILLIAMS:<br/> 25 Q. And did you expect that that message would</p> | <p>1 stated that the statement was true and accurate and<br/> 2 he mentioned other clients. And I'm trying to<br/> 3 establish as to whether these other clients included<br/> 4 Mr. Nothern, whether or not it was in the<br/> 5 information. And so what I'm asking right now is his<br/> 6 independent recollection.<br/> 7 MR. THEODOROU: You're playing with -- I'm<br/> 8 just going on the record is you're dealing with not<br/> 9 only evidence that's not probative of what's going on<br/> 10 here, but unfairly prejudicial evidence. I'm just<br/> 11 raising that standing objection. I did it before and<br/> 12 it is standing.<br/> 13 MS. WILLIAMS: That's fine.<br/> 14 MR. THEODOROU: Okay.<br/> 15 BY MS. WILLIAMS:<br/> 16 Q. And I am asking Mr. Davis his recollection<br/> 17 as to why he would provide Mr. Nothern with the<br/> 18 information which we've already established he<br/> 19 provided prior to the embargo time.<br/> 20 So if I could repeat my question to you,<br/> 21 Mr. Davis, I wanted to know, did you -- you said that<br/> 22 you believed that the information would allow other<br/> 23 clients to make significant moves in advance of the<br/> 24 market. Do you believe if Mr. Nothern retrieved your<br/> 25 voicemail prior to the embargo time that it would</p> |
| Page 207  | Page 209  |
| <p>1 assist Mr. Nothern in making --<br/> 2 A. It depends when he got it.<br/> 3 MR. STANCIL: Again --<br/> 4 MR. THEODOROU: I'm going to raise my<br/> 5 objection on this.<br/> 6 MR. ROSSETTI: First of all, let him<br/> 7 answer.<br/> 8 MR. THEODOROU: No, I get to --<br/> 9 MR. ROSSETTI: Let him finish answering<br/> 10 it.<br/> 11 MR. THEODOROU: No, no. She asked the<br/> 12 question, I was about to say -- give my objection. I<br/> 13 can raise my objection when she asks the question.<br/> 14 And I'm going to raise an objection, it is a standing<br/> 15 objection. I think you're playing games with this<br/> 16 plea. And if you'll look at the information that was<br/> 17 filed, which I noticed you've not shown him, he's not<br/> 18 pleading to anything concerning Steve Nothern. Steve<br/> 19 Nothern is not --<br/> 20 MS. WILLIAMS: I'm not asking --<br/> 21 MR. THEODOROU: Steve Nothern is not in<br/> 22 the information, this is unfairly prejudicial<br/> 23 evidence for the purpose of this deposition.<br/> 24 MS. WILLIAMS: I disagree with you. This<br/> 25 statement that Mr. Davis made at the plea hearing, he</p>   | <p>1 allow him to make significant moves in advance of the<br/> 2 market?<br/> 3 MR. THEODOROU: Objection on form across<br/> 4 the board, in terms of asking for speculation and all<br/> 5 the rest.<br/> 6 MR. STANCIL: Pete, I want you to answer<br/> 7 the question if you have a specific recollection of<br/> 8 what you recall with respect to Mr. Nothern.<br/> 9 MS. WILLIAMS: As to your intent, my<br/> 10 question is about intent.<br/> 11 MR. STANCIL: I'm sorry, I don't think<br/> 12 anybody knows what the question is anymore. I just<br/> 13 want to be clear, you're asking him --<br/> 14 MS. WILLIAMS: What was his intent in<br/> 15 leaving the voicemail message to Mr. Nothern, what<br/> 16 did he believe that the information would allow<br/> 17 Mr. Nothern to do.<br/> 18 MR. THEODOROU: Objection.<br/> 19 MS. WILLIAMS: And he said that he<br/> 20 believed that it would allow other clients, and I'm<br/> 21 trying to figure out if that was with regard to<br/> 22 Mr. Nothern as well.<br/> 23 MR. STANCIL: I think you might be better<br/> 24 off asking him if he had a specific recollection<br/> 25 first with respect to Mr. Nothern.</p>  |

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| Page 210  | Page 212  |
|---|---|
| <p>1 BY MS. WILLIAMS:<br/>2 Q. What was your intent in leaving the<br/>3 voicemail message for Mr. Nothern?<br/>4 MR. THEODOROU: Objection to the question<br/>5 MR. STANCIL: To the extent you recall,<br/>6 answer the question. I don't want to -- this is your<br/>7 record, and I'm not trying to get in the middle of<br/>8 it, but I don't want -- my concern here is Mr. Davis<br/>9 is being asked to answer very difficult and<br/>10 conclusory questions, which it's impossible for him<br/>11 to sort of pick through the different layers.<br/>12 If the question is, do you have a<br/>13 recollection as to what your intent was with a<br/>14 message for Mr. Nothern, I think that's a fair<br/>15 question, at least from our perspective.<br/>16 MR. ROSSETTI: The question of what his<br/>17 intent was is an equally fair question.<br/>18 MS. WILLIAMS: Absolutely.<br/>19 MR. ROSSETTI: And that's the question<br/>20 that's pending, and we would like him to answer that<br/>21 question.<br/>22 MS. WILLIAMS: He stated that he had an<br/>23 intent with regard to at least Mr. Youngdahl and my<br/>24 other clients, and I'm trying to figure out what his<br/>25 intent was in leaving this message for Mr. Nothern.</p> | <p>1 Q. I would like for Mr. Davis to answer the<br/>2 question I asked, which was, what your intent was, do<br/>3 you know what your intent was in leaving the<br/>4 voicemail for Mr. Nothern on October 31st, 2001?<br/>5 MR. THEODOROU: Objection.<br/>6 MR. STANCIL: To the extent you recall, go<br/>7 ahead and answer.<br/>8 THE WITNESS: Look, I had a clear<br/>9 preexisting agreement with Ward McCarthy and John<br/>10 Youngdahl. I had no such agreement whatsoever with<br/>11 Steve or any of my other clients.<br/>12 When I called other people on that<br/>13 morning, I was expecting them to honor the embargo<br/>14 time. Obviously they didn't have to. I mean, that<br/>15 was the extent of it. I mean, you know, my clients<br/>16 are not in the habit of telling me of what they do<br/>17 with my information. I've never had a client tell me<br/>18 what their trades are or anything.<br/>19 So all I can -- all I do is convey<br/>20 information about Washington, and that's it. I mean,<br/>21 there's never any conversations about what they are<br/>22 using it for.<br/>23 BY MS. WILLIAMS:<br/>24 Q. I'm trying to ask something differently<br/>25 from what the clients told you that they intended to</p> |
| Page 211  | Page 213  |
| <p>1 MR. THEODOROU: Are you characterizing?<br/>2 Maybe we ought to have his testimony read back,<br/>3 because you are characterizing his testimony, what he<br/>4 said in his plea colloquy.<br/>5 MS. WILLIAMS: I read that --<br/>6 MR. THEODOROU: No, his plea colloquy said<br/>7 --<br/>8 MS. WILLIAMS: "Would allow Mr. Youngdahl<br/>9 and my other clients to make significant moves."<br/>10 MR. THEODOROU: Where are you reading<br/>11 from?<br/>12 MS. WILLIAMS: I am on page 21, line 20 --<br/>13 starting with line 19. If you want to start at the<br/>14 beginning of the sentence, it's line 17.<br/>15 MR. THEODOROU: All right.<br/>16 MS. WILLIAMS: And I read that verbatim.<br/>17 MR. THEODOROU: And you hear what my<br/>18 standing objection is in terms of this. This is<br/>19 playing games with this document.<br/>20 MS. WILLIAMS: I disagree.<br/>21 MR. THEODOROU: Of course you're going to<br/>22 disagree.<br/>23 MR. STANCIL: I think we ought to ask<br/>24 Mr. Davis another question.<br/>25 BY MS. WILLIAMS:</p>  | <p>1 use your information for. I'm not asking that<br/>2 question. I know -- I don't really want to know<br/>3 that.<br/>4 I wanted to know if you had any<br/>5 expectation when you left the message for Mr. Nothern<br/>6 as to what might happen -- as to what he might do<br/>7 with the information?<br/>8 MR. THEODOROU: Objection.<br/>9 MR. STANCIL: Do you recall?<br/>10 THE WITNESS: I just didn't have any<br/>11 expectation. I mean, I didn't even -- I assumed he<br/>12 wasn't even going to get it. I left a phone message.<br/>13 BY MS. WILLIAMS:<br/>14 Q. But you did have an expectation, and I'm<br/>15 going to read this, "my expectation was that<br/>16 Mr. Youngdahl and Goldman Sachs would use the<br/>17 information to their advantage in treating government<br/>18 securities." Is that true?<br/>19 MR. THEODOROU: Objection.<br/>20 BY MS. WILLIAMS:<br/>21 Q. I'm on line 15 of page 21.<br/>22 A. I expected John Youngdahl to wait until<br/>23 10:00 a.m., too. But, you know, it's clear that that<br/>24 didn't -- that he was, once I conveyed the<br/>25 information, that he could whatever he wanted with it</p>   |

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1 and --

2 MR. STANCIL: There's a couple of things I  
3 just have to get on the record to make sure we're  
4 clear. Pete, you knew that even if Mr. Youngdahl was  
5 waiting at 10:00 a.m. to push the button right at  
6 10:00 a.m., you knew that that was an advantage to  
7 him in the marketplace?

8 THE WITNESS: Yes, it was.

9 MR. STANCIL: And, Pete, is it your  
10 testimony today that everything you said in open  
11 court -- in court in front of the magistrate judge in  
12 Exhibit 17 was the truth at the time?

13 THE WITNESS: Yes, yes.

14 BY MS. WILLIAMS:

15 Q. Okay. So did you also have an expectation  
16 that your other clients who you left messages for  
17 before the embargo expired might also use the  
18 information to trade --

19 MR. THEODOROU: Objection.

20 THE WITNESS: I had no basis for any  
21 expectation.

22 BY MS. WILLIAMS:

23 Q. Excuse me -- let me finish the question.

24 Did you have any -- it says you had an  
25 expectation that Mr. Youngdahl should use the

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1 anything with it. Sometimes they use it. I never --  
2 I never know. And in the case of Mr. Youngdahl, it  
3 was clear, because we -- he and I had this exchange  
4 on July 12th and so on. But there just was no such  
5 exchange with Mr. Nothern.

6 BY MS. WILLIAMS:

7 Q. Did you believe that this information that  
8 you left on the voicemail would be beneficial to  
9 Mr. Nothern?

10 MR. THEODOROU: Objection.

11 THE WITNESS: I had no way of knowing.  
12 You know, it was possible it could have, it was  
13 possible it couldn't have.

14 BY MS. WILLIAMS:

15 Q. Do you know if Mr. Nothern in the capacity  
16 of his job at MFS traded in the 30-year bonds?

17 A. No, I don't know. I have no way of  
18 knowing that.

19 Q. Do you know what his job responsibilities  
20 were at MFS?

21 A. No, I know he worked there. I know he was  
22 interested in Washington economic policy information.  
23 I know he retained me. You know, clients are not in  
24 the habit of detailing their trades to me. I've  
25 never had a client tell me what -- any trades. They

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1 information to his advantage in trading government  
2 securities. Did you believe your other clients would  
3 use the information to their advantage in trading  
4 government securities?

5 MR. STANCIL: I'm sorry, I object.

6 MR. THEODOROU: Objection.

7 MR. STANCIL: Can we go off the record for  
8 a second? I think we can clear a lot of this up.

9 THE VIDEOGRAPHER: Off the record at  
10 4:13:32 p.m.

11 (Discussion off the record.)

12 THE VIDEOGRAPHER: Back on the record at  
13 4:16:44 p.m.

14 BY MS. WILLIAMS:

15 Q. Mr. Davis, before we went off the record,  
16 I was asking you whether or not you had an  
17 expectation that providing Mr. Nothern with the  
18 voicemail that you left before the embargo would  
19 allow him to use that information in trading -- to  
20 his advantage in trading government securities?

21 MR. THEODOROU: Objection.

22 THE WITNESS: I just -- I just had no such  
23 expectation. I mean, I have no way of knowing what a  
24 client's going to do with my information. A lot of  
25 times I give clients information and they don't do

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1 are asking me questions.

2 Q. Can I ask you a question, and this is  
3 going back to some questioning I asked earlier  
4 regarding Ms. Bostjancic and Mr. Greenlawn, who asked  
5 you not to call them anymore.

6 A. Right.

7 Q. And I also recall earlier in the  
8 deposition, you said that you had discarded the  
9 agreement?

10 A. Yes.

11 Q. That you signed with Mr. Anderson?

12 A. That's correct.

13 Q. Is that correct?

14 A. That's correct.

15 Q. And when did you discard that agreement?

16 A. It was in early August, right after the  
17 August quarterly refunding in 2001.

18 Q. Why did you discard the agreement in early  
19 August 2001?

20 A. Because I had a habit of filing those  
21 documents that I got from Treasury in a file. And so  
22 I went and put the August documents in front of the  
23 May documents. And I noticed there was an empty  
24 folder next to it, and I had forgotten it was there.  
25 And it wasn't marked, I didn't know what was in it,

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| <p style="text-align: right;">Page 218</p> <p>1 so I pulled it out, and I opened it up, and there was<br/>2 one page in there. And it was a copy of the<br/>3 agreement.<br/>4 And I looked at it, and I thought, geez.<br/>5 You know, and I looked at it and I sort of refreshed<br/>6 my memory that I -- you know, about promising to<br/>7 honor the embargo. And here I was violating it, so<br/>8 on my way to my car after work, I pitched it in the<br/>9 trash can out back. And that's what I did.<br/>10 MS. WILLIAMS: The court reporter has<br/>11 passed me a note that he needs to change the tape.<br/>12 THE VIDEOGRAPHER: This is the end of tape<br/>13 number four in the video deposition of Peter Davis.<br/>14 Off the record at 4:20:40 p.m., on April 19th, 2006.<br/>15 (Recess.)<br/>16 THE VIDEOGRAPHER: This is the beginning<br/>17 of tape number 5 in the video deposition of Peter<br/>18 Davis. On the record at 4:28:06 p.m. on April 19th,<br/>19 2006.<br/>20 BY MS. WILLIAMS:<br/>21 Q. Mr. Davis, I was asking you questions<br/>22 about the agreement that you had with Mr. Fisher that<br/>23 you said that you discarded in August.<br/>24 A. An agreement with who?<br/>25 Q. Excuse me, with Mr. Anderson.</p>                         | <p style="text-align: right;">Page 220</p> <p>1 THE WITNESS: No, I don't.<br/>2 BY MS. WILLIAMS:<br/>3 Q. Do you believe it was in 2001?<br/>4 A. I just -- I have no recollection. I know<br/>5 they called me. I just -- I'm not clear when it was.<br/>6 I'm just not -- I just don't -- I have a clear<br/>7 recollection of them calling me, I don't have a clear<br/>8 recollection of when it was.<br/>9 Q. In the agreement with Mr. Anderson that<br/>10 you discarded, you said that you had been violating<br/>11 the embargo?<br/>12 A. Right.<br/>13 Q. After you discarded this agreement in<br/>14 August of 2001?<br/>15 A. Right.<br/>16 Q. Did you at that time intend to call<br/>17 clients before the embargo expired at the October<br/>18 refunding conference?<br/>19 A. No, the opposite. I decided then and<br/>20 there that I wouldn't. And in fact, I told my<br/>21 assistant that. In fact, the morning of October<br/>22 31st, before I went to the meeting, I instructed my<br/>23 assistant to make sure she was off the phone, to make<br/>24 sure she was ready, and to have a blank E-mail with<br/>25 our logo on it ready to punch up. And that I was</p>   |
| <p style="text-align: right;">Page 219</p> <p>1 A. Oh, right, Mr. Anderson, right.<br/>2 Q. The agreement that you had with Mr.<br/>3 Anderson? And I believe you said you discarded it in<br/>4 August of 2001?<br/>5 A. Early August, 2001, right.<br/>6 Q. Had you received calls from Mr. Greenlawn<br/>7 or Ms. Bostjancic when you discarded this agreement?<br/>8 A. That's a good question. I'm trying to<br/>9 remember. I'm not clear when they called me, I know<br/>10 they called me. It could have been then, but I<br/>11 don't -- it could have been in May, I just -- I<br/>12 mean --<br/>13 Q. Do you recall if they called you after a<br/>14 quarterly refunding conference?<br/>15 A. I think it was shortly after a quarterly<br/>16 refunding conference, yes, or meeting on, you know,<br/>17 one of those Wednesdays. I don't remember which one.<br/>18 Q. Do you think that it was either May or<br/>19 August of 2001?<br/>20 A. It probably was, yeah. See, part of the<br/>21 problem is I don't remember when I started calling.<br/>22 May might have been the first time. I just -- I<br/>23 just -- it was February, you know, I just don't -- of<br/>24 course, I wasn't there in February. I don't know.<br/>25 MR. STANCIL: Do you recall?</p> | <p style="text-align: right;">Page 221</p> <p>1 going to dictate to her something that I wanted her<br/>2 to send out right at 10:00 a.m., you know, at the<br/>3 embargo time.<br/>4 I didn't say 10:00 a.m. at the embargo<br/>5 time, because I didn't know what the embargo time<br/>6 was. And I'd given her those clear instructions and<br/>7 I just didn't do it. You know, I was angry about<br/>8 what Treasury was doing at the meeting, I walked out<br/>9 of the meeting and I did not follow through on my<br/>10 intention to just wait for the embargo time, send an<br/>11 E-mail out, you know, telling people what was said at<br/>12 the meeting.<br/>13 Q. Besides the fact that you were angry about<br/>14 what was announced, was there any other reason why<br/>15 you decided not to wait and have Ms. Sullivan send<br/>16 out the E-mail --<br/>17 A. No, that was the only reason. I mean, it<br/>18 was just -- like I said, I told her and my intention<br/>19 up until I heard what Treasury was doing was that I<br/>20 would just wait until -- I would call her, I would<br/>21 dictate something to her, and she would just send it<br/>22 out because I wouldn't be able to get back to the<br/>23 office before then, and she would just send it out.<br/>24 But I didn't do that, I was upset about what Treasury<br/>25 did and I just started calling people.</p> |

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| <p>1 Q. Did you have -- at that time, did you<br/>2 believe that informing your clients about the<br/>3 cancellation of the bond would -- before the embargo,<br/>4 would benefit you at all?</p> <p>5 A. I mean, one of the things that was going<br/>6 on was I had lost some clients earlier in the year<br/>7 that I felt I'd done a lot of really good honest<br/>8 public work for. And, you know, budget cuts were<br/>9 coming at that time. And I was -- one of the reasons<br/>10 I was calling some of the people who were not clients<br/>11 was, you know, to see if I could demonstrate to them<br/>12 that I was knowledgeable and, you know, in the know<br/>13 and that sort of thing. So you will notice that some<br/>14 of the calls were to people who were not clients, and<br/>15 never were clients.</p> <p>16 Q. And did you think that by calling these<br/>17 people would somehow be of benefit to you or Davis<br/>18 Capital?</p> <p>19 A. Well, yeah. Yes, on the chance they might<br/>20 become a client.</p> <p>21 Q. Did you think that it was also benefit you<br/>22 with your present clients?</p> <p>23 A. It's possible, but there was never any<br/>24 expectation of any monetary reward, or there was<br/>25 never any quid pro quo, or any participation in any</p> | <p>1 any other news accounts on any other clients<br/>2 regarding any trading?</p> <p>3 A. No none.</p> <p>4 Q. Any other information at all about any<br/>5 trading by any other clients?</p> <p>6 A. No, I -- no.</p> <p>7 Q. Did you call any other clients after you<br/>8 called Mr. Nothern on October 31st, 2001? And you<br/>9 can refer to Exhibit 30 to help refresh your<br/>10 recollection.</p> <p>11 MR. STANCIL: Be clear between what you<br/>12 remember now --</p> <p>13 THE WITNESS: Sure.</p> <p>14 MR. STANCIL: And what the document shows.</p> <p>15 THE WITNESS: Right.</p> <p>16 MR. STANCIL: Tell her what you remember.</p> <p>17 THE WITNESS: Well, my recollection now<br/>18 without referring to that document, Exhibit 30, is<br/>19 that when I got to Steve, I was at the end of the<br/>20 list. And I was calling back trying to reach people<br/>21 that I had not succeeded in reaching in the initial<br/>22 round of calls.</p> <p>23 And, you know, I -- I don't -- I mean, you<br/>24 know, looking at the document, I guess I can refresh<br/>25 my memory whether I actually talked to anybody after</p>   |
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| <p>1 trades. I mean, the only expectation was that<br/>2 perhaps they might think twice about, you know, if<br/>3 they had to let me go or something. And so I've<br/>4 never charged those clients anything other than my<br/>5 standard fees, and I've never received any other<br/>6 payment from them outside of standard fees.</p> <p>7 Q. Do you know whether Mr. Nothern placed<br/>8 orders to trade in 30-year bond on October 31st,<br/>9 2001?</p> <p>10 A. No, I have no such knowledge, I have no<br/>11 way of knowing that.</p> <p>12 Q. Do you know if any of your other clients<br/>13 traded in 30-year bond on October 31st, 2001?</p> <p>14 A. Well, there were some news accounts, I<br/>15 don't know if they are accurate. But, you know,<br/>16 clearly there were news accounts about Goldman<br/>17 trading in 30-year.</p> <p>18 Q. And was Mr. Youngdahl your contact at<br/>19 Goldman?</p> <p>20 A. Yes.</p> <p>21 Q. Except for these news accounts, do you<br/>22 have any other knowledge regarding any trading?</p> <p>23 A. No, there's no other way that I would know<br/>24 that.</p> <p>25 Q. And except for Goldman, were you aware of</p>   | <p>1 that. One of the problems then was that I didn't get<br/>2 through, I didn't get through, I tried back. And now<br/>3 today, I'm sitting here and, you know, with the<br/>4 exception of some of the ones that I remember very<br/>5 clearly, like Ward McCarthy and John Youngdahl and<br/>6 Bill Cohen, you know, I just don't have any clear<br/>7 recollections of -- because I mostly didn't get<br/>8 through.</p> <p>9 Q. Were you using a document to find the<br/>10 phone numbers to call the clients on October 31st?</p> <p>11 A. Yes. Well -- actually, no, I take it<br/>12 back. I had the main phone numbers already<br/>13 programmed into my cell. And so I was just calling,<br/>14 you know, I forget what storage numbers they were in,<br/>15 but I just called the storage number and then I<br/>16 called the next one, and then I called the next one,<br/>17 and then I called the next one.</p> <p>18 Q. Were they stored in a particular order?</p> <p>19 A. Yes, they were.</p> <p>20 Q. And was that the order that you referred<br/>21 to before?</p> <p>22 A. Yes.</p> <p>23 Q. So they were stored in your phone in this<br/>24 particular order?</p> <p>25 A. Right. Yeah, it started out with Ward</p> |

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|--|---|
| <p>1 McCarthy and went to Bill Cohen. And I sort of<br/>2 forget for sure what the order was after that, but<br/>3 whatever the order was, I just went punching it. And<br/>4 I remember Steve being last.<br/>5 Q. On Exhibit 30, do you see any entries of<br/>6 calls made after the call entry for Mr. Nothorn which<br/>7 appears at the top of page -- of the second page?<br/>8 A. There's several entries, mostly not<br/>9 getting through to anybody. I did talk to Peter<br/>10 Hamilton at 9:51, that's a research firm, they don't<br/>11 trade.<br/>12 Q. Just to clarify, do you recall talking to<br/>13 Mr. Hamilton, or do you just believe that this<br/>14 document is accurate?<br/>15 A. I just believe this document's accurate.<br/>16 I don't have a clear recollection beyond Ward, Bill<br/>17 Cohen at Capra, and John Youngdahl.<br/>18 Q. But you do have a recollection that you<br/>19 left a voicemail for Mr. Nothorn?<br/>20 A. Yes.<br/>21 Q. Do you recall if any of the clients that<br/>22 you called on October 31st, 2001 in the morning told<br/>23 you that they'd already heard that Treasury was<br/>24 canceling the 30-year bond?<br/>25 MR. THEODOROU: Objection.</p>  | <p>1 A. Yes, that's right.<br/>2 Q. And that you had discussed with her<br/>3 possibly having her send out an E-mail after the<br/>4 conference?<br/>5 A. Right.<br/>6 Q. Did you ever have Ms. Sullivan send out an<br/>7 mail regarding the information that you received at<br/>8 the October 31st, Treasury quarterly refunding<br/>9 conference?<br/>10 A. I don't recall. I do recall sending out<br/>11 an E-mail later in the day, and taking some of those<br/>12 direct quotations from Fisher. And as I recall, I<br/>13 wrote that myself and just put it out when I got back<br/>14 into the office, but it wasn't right away. It was --<br/>15 I forget when it was, it was late in the morning or<br/>16 maybe in -- it was some time later in the day.<br/>17 But there was some intervening activity, I<br/>18 may have gone up in the press building and met with<br/>19 this guy or I had some other errands, I forget what<br/>20 it was. There were things I did for like a half hour<br/>21 or an hour or something before I got back in the<br/>22 office.<br/>23 Q. Do you recall calling Ms. Sullivan on the<br/>24 morning of October 31st?<br/>25 A. I called her, and I'm trying to</p> |
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| <p>1 THE WITNESS: That -- nobody said that. I<br/>2 mean, it was -- I mean, I would convey information<br/>3 and they would ask me questions about it.<br/>4 BY MS. WILLIAMS:<br/>5 Q. Mr. McCarthy didn't tell you he had<br/>6 already heard that the bond was being cancelled?<br/>7 A. No one said that.<br/>8 Q. What did you do after you made these phone<br/>9 calls to your clients on the morning of October 31st,<br/>10 2001?<br/>11 A. Boy, my recollection was that I called the<br/>12 guy over at the press building about the possibility<br/>13 of renting space for my office, because I had just a<br/>14 day or two earlier found out -- or a few days or I<br/>15 forget when, but sometime earlier had found out from<br/>16 my landlord that I was going to be getting kicked<br/>17 out. So I may have gone over and met with him,<br/>18 although I'm not positive when that happened.<br/>19 I do recall that I didn't get back into my<br/>20 office until later that morning. It wasn't direct.<br/>21 There was something else that I was doing, I think<br/>22 that was it, I think I was looking for space for my<br/>23 office.<br/>24 Q. You mentioned that you had spoken to Ms.<br/>25 Sullivan before the conference.</p> | <p>1 remember -- oh, I know, it was to get a phone number<br/>2 of somebody else at Fidelity, because Lisa -- Lisa<br/>3 Emsbo-Mattingly was out on maternity leave. And so<br/>4 got her machine and left a message. And I was trying<br/>5 to find someone else to call to actually talk to a<br/>6 human being. I eventually got a receptionist, but I<br/>7 never got through to anybody. And so I called<br/>8 Allyson to get that phone number. And at that time,<br/>9 I told Allyson I just would do the E-mail when I got<br/>10 back to the office.<br/>11 Q. I would like to have this marked as<br/>12 Exhibit 31.<br/>13 (Davis Exhibit No. 31 was marked for<br/>14 identification.)<br/>15 BY MS. WILLIAMS:<br/>16 Q. Do you recognize this document, Mr. Davis?<br/>17 A. Yeah, this fits my memory that late that<br/>18 morning, I put out an E-mail to my clients at 11:33,<br/>19 11:34.<br/>20 Q. Is this a copy of the E-mail that you<br/>21 sent?<br/>22 A. Yes.<br/>23 Q. Did you draft this yourself?<br/>24 A. I wrote it all myself.<br/>25 Q. Do you see Mr. Nothorn's name on this</p>  |

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| <p>1 document? And I would refer you to eight lines up<br/>2 from the bottom in the middle.<br/>3 A. Yeah, he's on my standard E-mail list and<br/>4 he is there.<br/>5 Q. Why did you send this document to your<br/>6 clients?<br/>7 A. To give them additional information. You<br/>8 know, I put in some of the quotations that I had<br/>9 taken down when Undersecretary Fisher spoke.<br/>10 Q. Do you recall if you sent any other<br/>11 documents to your clients on October 31st regarding<br/>12 the cancellation of the 30-year bond?<br/>13 A. I don't have any recollection. I mean, I<br/>14 recall sending the E-mail, it was our standard<br/>15 practice to send out some of the additional tables.<br/>16 I don't -- we probably faxed those out, but I don't<br/>17 have a clear recollection of that.<br/>18 Q. Do you recall if you had any actual<br/>19 conversations with Mr. Nothern on October 31st, 2001?<br/>20 A. Oh, I'm clear that I did not. Never, ever<br/>21 talked to him. In fact, you know, I just hadn't had<br/>22 that many conversations with him the whole year. I<br/>23 mean, he was unavailable on a number of occasions,<br/>24 and you know, I'm sure I didn't talk to him on<br/>25 October 31st. In fact, I don't recall when I had</p> | <p>1 Q. And then I also want to refer you to line<br/>2 15 of that same page.<br/>3 A. Um-hum.<br/>4 Q. Do you see that line?<br/>5 A. Yeah.<br/>6 Q. What does that line show?<br/>7 A. That shows a call on July 31st, 2001 at<br/>8 10:36 a.m. to Steve Nothern's number. And it was<br/>9 almost certainly just a phone message because it was<br/>10 .6 minutes.<br/>11 Q. Do you recall speaking to Mr. Nothern on<br/>12 the 23rd of August, what's reflected at line 37, 34<br/>13 minutes?<br/>14 A. No, that was a long time ago.<br/>15 Q. Do you have any reason to doubt the<br/>16 accuracy of this phone record, though?<br/>17 A. No, I probably talked to him, but --<br/>18 Q. I would like to have this marked as<br/>19 Exhibit 33.<br/>20 (Davis Exhibit No. 33 was marked for<br/>21 identification.)<br/>22 BY MS. WILLIAMS:<br/>23 Q. Do you recognize this document, Mr. Davis?<br/>24 A. It is a Sprint phone bill to me at my<br/>25 business.</p> |
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| <p>1 talked to him previously.<br/>2 Q. Let me ask you about that. I'd like to<br/>3 have this marked as Exhibit 32. I'm going to have<br/>4 three exhibits, actually.<br/>5 (Davis Exhibit No. 32 was marked for<br/>6 identification.)<br/>7 BY MS. WILLIAMS:<br/>8 Q. Do you recognize this document?<br/>9 A. It's a Sprint phone bill for billing<br/>10 period ending August 26th, 2001.<br/>11 Q. Who is the bill for?<br/>12 A. It's -- yeah, it's to me. My business<br/>13 office.<br/>14 Q. Can I refer you to -- and I'm going to go<br/>15 to the Bates number now -- the SEC NOTH 00107689, do<br/>16 you see that page?<br/>17 A. Um-hum, yes.<br/>18 Q. And I'm looking at lines 36 and 37 on that<br/>19 page, do you see those lines?<br/>20 A. Yes.<br/>21 Q. What do those lines show?<br/>22 A. They show a brief call, which is probably<br/>23 a phone message at 11:20 a.m. to Steve Nothern's<br/>24 phone number. And then at 11:25, they show an<br/>25 extensive 35 minute call to the same number.</p>   | <p>1 Q. What's the date of this bill?<br/>2 A. For the period ending September 26th,<br/>3 2001.<br/>4 Q. I'd like to refer you to SEC NOTH<br/>5 00107672. Do you see that page?<br/>6 A. Yes.<br/>7 Q. I'm on line 34 on that page, do you see<br/>8 that?<br/>9 A. Yes.<br/>10 Q. What's reflected there?<br/>11 A. There's a call to Steve Nothern's number<br/>12 for 1.7 minutes.<br/>13 Q. On what date?<br/>14 A. Oh, September 6th, 12:40.<br/>15 Q. Do you recall making a call to Mr. Nothern<br/>16 on that date?<br/>17 A. No.<br/>18 Q. Do you have any reason to doubt the<br/>19 accuracy of this entry in the phone record?<br/>20 A. No.<br/>21 Q. And then also if you could refer to line<br/>22 51, do you see that line?<br/>23 A. Right, yeah.<br/>24 Q. What is reflected there?<br/>25 A. November 7, '01, 3:15 --</p>   |

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|---|--|
| <p>1 Q. September?</p> <p>2 A. I'm sorry, not November, yeah, September 7</p> <p>3 at 3:15 to Steve Nothern's number for three minutes.</p> <p>4 Q. Do you recall that conversation?</p> <p>5 A. No.</p> <p>6 Q. Do you have any reason to doubt that the</p> <p>7 entry here is accurate?</p> <p>8 A. No.</p> <p>9 Q. Can I ask you about line 19 of this same</p> <p>10 page, where I see the phone number (617) 954-5397, do</p> <p>11 you know whose phone number that was?</p> <p>12 A. No.</p> <p>13 Q. Is --</p> <p>14 A. I mean, sometimes when you call somebody</p> <p>15 and you actually get a receptionist, and a client I</p> <p>16 was calling for wasn't in. Occasionally, I would get</p> <p>17 transferred over to somebody else.</p> <p>18 Q. And if I could have this last document</p> <p>19 marked as Exhibit 34.</p> <p>20 (Davis Exhibit No. 34 was marked for</p> <p>21 identification.)</p> <p>22 BY MS. WILLIAMS:</p> <p>23 Q. This -- do you recognize this document?</p> <p>24 A. It's an excerpt from my October Sprint</p> <p>25 phone bill.</p> | <p>1 A. Yes, it is a broadcast fax delivery</p> <p>2 report.</p> <p>3 Q. For delivery of what?</p> <p>4 A. A broadcast fax to clients.</p> <p>5 Q. From Davis Capital --</p> <p>6 A. Yeah, on October 31st at --</p> <p>7 Q. 2001?</p> <p>8 A. Yeah, 7:44 to 7:53 in the morning, I</p> <p>9 guess.</p> <p>10 Q. Do you see Mr. Nothern's name on this</p> <p>11 document? And I will refer you to the third line</p> <p>12 from the bottom.</p> <p>13 A. Sure, he is on my standard broadcast fax</p> <p>14 list.</p> <p>15 Q. And I'm referring now to the PGS column,</p> <p>16 do you see that?</p> <p>17 A. Yeah.</p> <p>18 Q. What does that show?</p> <p>19 A. It is 15 pages.</p> <p>20 Q. And then the last column, SUC?</p> <p>21 A. Yeah, that means successful delivery of</p> <p>22 the -- it got picked up by another fax.</p> <p>23 Q. Do you have any recollection of what you</p> <p>24 faxed to the clients on this list that was 15 pages</p> <p>25 on October 31st, 2001?</p>  |
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| <p>1 Q. Just to clarify, the phone bill is related</p> <p>2 to your office phone; is that correct?</p> <p>3 A. Yeah, it was the long distance carrier for</p> <p>4 my business phone at 503 Capital Court.</p> <p>5 Q. If I could refer you to the second page of</p> <p>6 the document, 107681.</p> <p>7 A. Um-hmm.</p> <p>8 Q. And I'm on line 54 of that document, do</p> <p>9 you see that?</p> <p>10 A. Yes.</p> <p>11 Q. What's reflected there?</p> <p>12 A. October 16, 12:41 p.m. to Steve Nothern's</p> <p>13 phone for 1.9 minutes.</p> <p>14 Q. Do you recall talking to Mr. Nothern on</p> <p>15 the 16th of October 2001?</p> <p>16 A. Not -- no.</p> <p>17 Q. Do you believe that this record is</p> <p>18 accurate, though?</p> <p>19 A. I have no reason to doubt it.</p> <p>20 MS. WILLIAMS: I would like to have this</p> <p>21 marked as Exhibit 35.</p> <p>22 (Davis Exhibit No. 35 was marked for</p> <p>23 identification.)</p> <p>24 BY MS. WILLIAMS:</p> <p>25 Q. Do you recognize this document, Mr. Davis?</p>                                       | <p>1 A. I don't.</p> <p>2 Q. What was the first public document that</p> <p>3 you saw announcing Treasury's cancellation of the</p> <p>4 30-year bond?</p> <p>5 A. It was the -- Fisher's remarks in the room</p> <p>6 3311 Treasury on the morning of --</p> <p>7 Q. Besides the press release or the documents</p> <p>8 that you obtained at that conference.</p> <p>9 A. Right.</p> <p>10 Q. Did you see any other announcements that</p> <p>11 day regarding the 30-year bond being cancelled?</p> <p>12 A. That was the only document I saw that</p> <p>13 announced it.</p> <p>14 Q. Did you ever go on Treasury's website?</p> <p>15 A. Sure, I'd go on Treasury's website all the</p> <p>16 time.</p> <p>17 Q. Did you go on the website on October 31st,</p> <p>18 2001?</p> <p>19 A. It's possible.</p> <p>20 Q. Do you have any recollection of doing so,</p> <p>21 though?</p> <p>22 A. Boy, I mean -- no, I don't, I don't have a</p> <p>23 recollection. Usually I would go on their website to</p> <p>24 check things that I already had, make sure it was --</p> <p>25 again, I don't have any recollection.</p> |

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|---|--|
| <p>1 Q. Were you ever aware of an investigation by<br/>2 the Treasury's Office of Inspector General regarding<br/>3 trading in a 30-year bond on October 31st, 2001?<br/>4 A. I read about it in The Wall Street Journal<br/>5 some point later that week.<br/>6 Q. Did you have any involvement in the<br/>7 investigation?<br/>8 A. I don't think so, no.<br/>9 Q. You weren't -- were you interviewed by<br/>10 anyone from Treasury?<br/>11 A. No, I was not. I mean, a reporter called<br/>12 me up and asked about it, but I was never contacted<br/>13 by Treasury, or had any -- any involvement in the<br/>14 Treasury investigation.<br/>15 MS. WILLIAMS: Can we go off record for<br/>16 about five minutes?<br/>17 MR. STANCIL: Sure.<br/>18 THE VIDEOGRAPHER: Off the record at<br/>19 4:58:09 p.m.<br/>20 (Recess.)<br/>21 THE VIDEOGRAPHER: Back on the record at<br/>22 5:04:09 p.m.<br/>23 BY MS. WILLIAMS:<br/>24 Q. Mr. Davis, you stated that you attended<br/>25 the August 1st, 2001 Treasury refunding conference;</p> | <p>1 (Davis Exhibit No. 36 was marked for<br/>2 identification.)<br/>3 BY MS. WILLIAMS:<br/>4 Q. Do you recognize this document?<br/>5 A. Yes, it's my handwriting, it says August<br/>6 1, '01. It's notes. At the bottom it says,<br/>7 embargoed 9:35 a.m.<br/>8 Q. When did you write these notes?<br/>9 A. It says -- the date on the notes is August<br/>10 1, 2001, it says, Brian Rosborough who is the<br/>11 Assistant Secretary for Financial Markets spoke.<br/>12 Q. Spoke where?<br/>13 A. At the refunding meeting on August 1st.<br/>14 Q. Do you believe you took these notes during<br/>15 the refunding conference on August 1st, 2001?<br/>16 A. Yes.<br/>17 Q. And do you believe that this entry at the<br/>18 bottom, embargo 9:35 a.m., that the embargo expired<br/>19 at 9:35 a.m. on August 1st?<br/>20 A. Yes, yes.<br/>21 Q. What did you do immediately after the<br/>22 August 1st, 2001 conference?<br/>23 A. I walked out and made similar calls to<br/>24 what I did on October 31st.<br/>25 Q. Do you recall who you called that day?</p> |
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| <p>1 is that correct?<br/>2 A. Yes.<br/>3 Q. What time did that conference start?<br/>4 A. They all started at 9:00, as I recall.<br/>5 Q. Did you stay for the entire conference?<br/>6 A. Yes.<br/>7 Q. Do you recall if the doors were closed<br/>8 during that conference?<br/>9 A. Not particularly. They were open for some<br/>10 of them -- and some of the meetings were open, the<br/>11 doors were opened. You know, usually there would be<br/>12 a staff person standing there. And some of them the<br/>13 meetings were closed. I don't recall in August.<br/>14 Q. Do you recall who spoke at the August<br/>15 refunding conference?<br/>16 A. Geez, I don't.<br/>17 Q. Do you recall whether an embargo was<br/>18 discussed at the conference?<br/>19 A. There's always an embargo.<br/>20 Q. Do you know how long the embargo was at<br/>21 the August --<br/>22 A. I don't recall. Usually they were ten or<br/>23 15 minutes.<br/>24 MS. WILLIAMS: Could I have this marked as<br/>25 Exhibit 36.</p>                   | <p>1 A. No. I mean -- I'm sure I called Ward and<br/>2 a few of the others, but I don't have any<br/>3 recollection of who I called.<br/>4 Q. Do you know if you called Mr. Nothorn tha<br/>5 day?<br/>6 A. I don't recall.<br/>7 Q. I'd like to have these marked as Exhibit<br/>8 37.<br/>9 (Davis Exhibit No. 37 was marked for<br/>10 identification.)<br/>11 BY MS. WILLIAMS:<br/>12 Q. Do you recognize this document?<br/>13 A. This is a mobile cell phone Verizon<br/>14 telephone bill for the month -- well, for the month<br/>15 ending August -- I'm not sure exactly when it ends,<br/>16 but it is for August.<br/>17 Q. The billing date, do you see that at the<br/>18 top, August 19th, 2001?<br/>19 A. Well, the billing date, that's a term of<br/>20 art by Verizon. I'm not sure what that means. I<br/>21 think that's the date they send it out or maybe it's<br/>22 the last date of the calling period.<br/>23 Q. Can you turn to SEC NOTH 00114098?<br/>24 A. Yes.<br/>25 Q. Do you see any calls there that reflect</p>                          |

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|---|---|
| <p>1 the calls you made to clients after the August 1st,<br/>2 2001 quarterly refunding conference?<br/>3 A. Let's see, yes, starting out on line 11<br/>4 and going through line -- well, I'm not sure, I guess<br/>5 going to line 20 or maybe 21, I'm not sure.<br/>6 Q. Do you see any calls there reflecting a<br/>7 call to Mr. Nothorn on August 1st?<br/>8 A. On line 20 at 9:39.<br/>9 Q. How long was that call?<br/>10 A. 12 minutes.<br/>11 Q. Do you have any recollection of that call<br/>12 today?<br/>13 A. No.<br/>14 Q. Who was the first client that you called,<br/>15 can you tell that from looking at this document?<br/>16 A. Yes, I can. It was always to Ward<br/>17 McCarthy, so that would be line 11 at 9:19 a.m.<br/>18 Q. And who was line 12, was that a client?<br/>19 A. Line 12 would be Bill Cohen at Capra.<br/>20 Q. What about at line 13?<br/>21 A. It's probably SAC, but I don't remember<br/>22 the number off the top of my head.<br/>23 Q. And above Mr. Nothorn's call, do you<br/>24 recognize any other calls to clients from this<br/>25 record?</p>                                    | <p>1 last time Treasury had issued war bonds, and what<br/>2 the, you know, how they had gone about it. I don't<br/>3 have any recollection who asked me, but I do remember<br/>4 doing the research. And I assume I reported it back<br/>5 and I -- that's all I remember.<br/>6 Q. Do you know what year you would have done<br/>7 this research?<br/>8 A. Not -- no, I mean, I don't recall now.<br/>9 I do have a recollection of calling Malvey<br/>10 and asking him about Treasury's experience with war<br/>11 bonds, and whether they had any historical documents<br/>12 I might be able to get, you know, things like that.<br/>13 Q. Do you recall if Mr. Malvey provided you<br/>14 any information about Treasury war bonds?<br/>15 A. I don't recall. I don't think he did.<br/>16 I -- I don't recall where I got the information. It<br/>17 was -- I just don't recall. I mean, you know, it was<br/>18 a public source, it was some historical document that<br/>19 I tracked down someplace. In fact, it might have<br/>20 been in a history -- I just --<br/>21 Q. Let me ask a question going back to this<br/>22 August 1st conference. Did you testify earlier that<br/>23 your intent was not to call clients before the<br/>24 embargo expired after this August 1st conference --<br/>25 after you made the calls in the August 1st, and then</p> |
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| <p>1 A. I just don't know the phone numbers well<br/>2 enough now to be able to identify each and every one<br/>3 of those.<br/>4 Q. What phone did you use to make the calls?<br/>5 A. Cell phone, it's listed at the top of the<br/>6 page there.<br/>7 Q. And you said you left the Treasury<br/>8 building when you made these calls?<br/>9 A. Correct.<br/>10 Q. Why did you leave the Treasury building on<br/>11 August 1st to make the calls?<br/>12 MR. THEODOROU: Objection.<br/>13 THE WITNESS: Because I was violating the<br/>14 embargo.<br/>15 BY MS. WILLIAMS:<br/>16 Q. Do you know if in any of these calls to<br/>17 clients that you mentioned the embargo?<br/>18 A. I don't have any recollection. I mean, I<br/>19 probably did, but I don't have any recollection.<br/>20 Q. Do you ever recall having a conversation<br/>21 with Mr. Nothorn about Treasury war bonds?<br/>22 A. Yeah, that's right, I did, that's right.<br/>23 You know, I can't swear it was him, but I remember a<br/>24 client asking me to do some research about Treasury<br/>25 war bonds. And I remember doing some research on the</p> | <p>1 you made a decision not to call --<br/>2 A. I sort of came to my senses after these<br/>3 calls and said, geez, I shouldn't be doing this. You<br/>4 know, my memory was jogged by seeing the -- a copy of<br/>5 the agreement with Roger Anderson. As I was going to<br/>6 my car to drive home, I tossed it in the trash, and I<br/>7 sort of said to myself, I'm not doing this anymore.<br/>8 Q. But you said that the -- and I'm only<br/>9 going to ask a couple of questions. At the October<br/>10 31st, 2001 meeting, when you heard the information<br/>11 about the 30-year bond, you got mad?<br/>12 A. Right.<br/>13 Q. And you decided that you were going to<br/>14 call your clients?<br/>15 A. That's right.<br/>16 Q. Did you think that your clients would be<br/>17 surprised by this information?<br/>18 A. Yes, in fact, the reason I was mad I felt<br/>19 Treasury had misled the market for political reasons.<br/>20 Q. Did you ever have any conversations with<br/>21 Mr. Nothorn regarding any sources that you had at<br/>22 Treasury?<br/>23 MR. THEODOROU: Objection.<br/>24 THE WITNESS: No.<br/>25 BY MS. WILLIAMS:</p>  |

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|--|--|
| <p>1 Q. No contacts that you had at Treasury?</p> <p>2 A. I mean, obviously he attended the meeting</p> <p>3 I set up, we talked about earlier. But I -- no, when</p> <p>4 I deal with clients, I don't convey sources</p> <p>5 typically. I mean, usually I'm just saying, hey, I</p> <p>6 found this out, I found that out. And I don't say</p> <p>7 where I got it. I just say, you know, this is what I</p> <p>8 understand's going to happen. And that's it.</p> <p>9 Q. Do your clients ever ask you where the</p> <p>10 source of the information came from?</p> <p>11 A. Sure, sometimes they do.</p> <p>12 Q. If they did, would you disclose the</p> <p>13 source?</p> <p>14 A. No, unless it's a public -- I mean,</p> <p>15 sometimes sources will have said something in a</p> <p>16 public setting, where maybe it didn't get picked up</p> <p>17 by the media, for example. And I was there and so,</p> <p>18 you know, then I would feel that was okay to quote</p> <p>19 somebody in a setting like that.</p> <p>20 Q. You were just saying that you -- and I</p> <p>21 know I'm skipping around a little bit, and I'm sorry.</p> <p>22 I'm just coming to end here.</p> <p>23 A. Sure, sure, sure.</p> <p>24 Q. You said that on October 31st you felt</p> <p>25 that Treasury had misled the market; is that right?</p>   | <p>1 Q. Did you think this information would</p> <p>2 impact your client's business?</p> <p>3 MR. THEODOROU: Objection.</p> <p>4 THE WITNESS: I wasn't -- it was going to</p> <p>5 affect the market. I had no idea whether it was</p> <p>6 going affect them, or whether they were even going to</p> <p>7 use it.</p> <p>8 BY MS. WILLIAMS:</p> <p>9 Q. To the extent that any of your clients, if</p> <p>10 any of them traded in that market, do you think it</p> <p>11 would have affected their business?</p> <p>12 MR. THEODOROU: Objection.</p> <p>13 THE WITNESS: That's speculative, that's</p> <p>14 speculative. I never knew what my clients were</p> <p>15 doing. You know, clients have never shared trades</p> <p>16 with me, I never know what they are trading.</p> <p>17 BY MS. WILLIAMS:</p> <p>18 Q. My question is a little different, though.</p> <p>19 If a client traded in that market, you said that this</p> <p>20 would affect the market, do you think that it would</p> <p>21 affect the client's business?</p> <p>22 MR. THEODOROU: Objection.</p> <p>23 BY MS. WILLIAMS:</p> <p>24 Q. Since they traded in that market?</p> <p>25 MR. THEODOROU: Objection.</p>  |
| Page 247   | Page 249   |
| <p>1 A. Right.</p> <p>2 Q. And how do you believe they misled the</p> <p>3 market?</p> <p>4 A. By -- I mean, before every quarterly</p> <p>5 refunding meeting, Treasury officials meet with</p> <p>6 certain people on Wall Street, they meet with the</p> <p>7 advisory committee, which is composed of key people</p> <p>8 from Wall Street, you know, people from the bond</p> <p>9 market who they are selling all this debt to.</p> <p>10 And for at least a year and a half, the</p> <p>11 market had been expecting Treasury to announce the</p> <p>12 cessation of the 30-year bond, but when the -- over</p> <p>13 the summer of 2001, when it became clear that the</p> <p>14 deficit was turning around and going up, and I was</p> <p>15 one of the first people to say that that was</p> <p>16 happening, you know, for them to then announce in</p> <p>17 October, at the end of October, when the deficit was</p> <p>18 clearly going up, there was no doubt.</p> <p>19 And so the whole view of the market had</p> <p>20 changed and Treasury knew it, and they still went out</p> <p>21 and announced the cessation of the 30-year bond, in</p> <p>22 my opinion, as a guise to show their confidence that</p> <p>23 the deficit wasn't really going up. But in fact,</p> <p>24 that was when the deficit started going straight up.</p> <p>25 It grew at very rapid rates thereafter.</p> | <p>1 THE WITNESS: It's possible, but, you</p> <p>2 know, you never know whether they are long or short,</p> <p>3 you never know what they are in, who knows. I mean,</p> <p>4 you know, it certainly could have, but I had no way</p> <p>5 of knowing whether it did.</p> <p>6 BY MS. WILLIAMS:</p> <p>7 Q. Before today, when is the last time you</p> <p>8 talked to Mr. Nothorn?</p> <p>9 A. Geez, I don't recall. I mean, looking at</p> <p>10 some of these phone records, I guess it was in</p> <p>11 September, but I know I didn't talk to him on October</p> <p>12 31st and I certainly have not ever talked to him</p> <p>13 since.</p> <p>14 Q. You don't believe you've spoken to him</p> <p>15 since October 31st?</p> <p>16 A. If he was the person who asked about the</p> <p>17 war bonds it's possible that I conveyed that</p> <p>18 information shortly -- some other time after that.</p> <p>19 But I don't, I don't clearly -- I don't recall. I</p> <p>20 mean -- and if we talked after October 31st, it was</p> <p>21 not about anything to do with the 30-year bond or any</p> <p>22 of that.</p> <p>23 Q. Do you know when MFS ceased to be a client</p> <p>24 of Davis Capital?</p> <p>25 A. I'm not sure. It was some time late 2001</p> |

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1 or early 2002, but I don't recall.

2 Q. Do you know if between October 31st and  
3 when MFS ceased to be a client, if you still sent  
4 Mr. Nothern E-mails, like the mass E-mails?

5 A. You know, I would usually keep people on  
6 E-mail lists even after they left. It might  
7 possibly -- you know, on the hope that they might  
8 come back or something like that. I mean, it  
9 didn't -- you know, if somebody wrote me a letter and  
10 said we're no longer going to require your services  
11 or something, then I would usually get around to  
12 removing their E-mail addresses within a month or  
13 two.

14 Q. Before today, did you have any contact  
15 with Mr. Nothern's counsel from Foley Hoag?

16 A. This is the first time I've ever seen him.

17 MR. THEODOROU: It was a grand time.

18 MS. WILLIAMS: I have no further  
19 questions.

20 MR. THEODOROU: I do have quite a few  
21 questions. I thought maybe we'd break today and  
22 start tomorrow morning.

23 MS. WILLIAMS: That's fine with me.

24 MR. THEODOROU: We'll start the cross  
25 tomorrow.

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1 THE VIDEOGRAPHER: This concludes today's  
2 portion of the deposition of Peter Davis. Off the  
3 record at 5:24:10 p.m. on April 19th, 2006 consisting  
4 of five videotapes.

5 (Whereupon, at 5:24 p.m., the deposition  
6 adjourned to be resumed on April 20, 2006, at 9:30  
7 a.m.)  
8  
9

10  
11 \_\_\_\_\_  
12 Signature of the Witness

13 SUBSCRIBED AND SWORN to before me this \_\_\_\_\_ day  
14 of \_\_\_\_\_, 200\_\_.

15  
16 \_\_\_\_\_  
17 NOTARY PUBLIC

18 My Commission expires: \_\_\_\_\_  
19  
20  
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22  
23  
24  
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1 UNITED STATES DISTRICT COURT  
2 FOR THE DISTRICT OF MASSACHUSETTS  
3 - - - - - X  
4 UNITED STATES SECURITIES AND :  
5 EXCHANGE COMMISSION, :  
6 Plaintiff, :  
7 v. : Civil Action No.  
8 STEVEN E. NOTHERN, : 05-10983(NMG)  
9 Defendant. : VOL. II

10 - - - - - X

11 Washington, D.C.

12 Thursday, April 20, 2006

13 Continued videotape deposition of PETER  
14 DAVIS, JR., a witness herein, recalled for further  
15 examination by counsel for the Defendant in the  
16 above-entitled matter, pursuant to notice and  
17 subpoena, the witness being previously sworn by  
18 PENNY M. DEAN, a Notary Public in and for the  
19 District of Columbia, taken at the offices of U.S.  
20 Securities and Exchange Commission, 100 F Street, NE,  
21 Washington, D.C., at 9:44 a.m., Thursday, April 20,  
22 2006, and the proceedings being taken down by  
23 Stenotype by PENNY M. DEAN, RPR, and transcribed  
24 under her direction.

25

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| 1 APPEARANCES:                            | 1 CONTENTS   |
| 2   | 2 WITNESS EXAMINATION BY COUNSEL FOR                     |
| 3 On behalf of the Plaintiff:             | 3 PETER DAVIS, JR. PLAINTIFF DEFENDANT                   |
| 4 ERICA Y. WILLIAMS ESQ.                  | 4 By Mr. Theodorou 257                                   |
| 5 JOHN J. ROSSETTI, JR. ESQ.              | 5 By Ms. Williams 336                                    |
| 6 U.S. Securities and Exchange Commission | 6  |
| 7 100 F Street, NE                        | 7 EXHIBITS   |
| 8 Washington, D.C. 20549-4010             | 8 DAVIS EXHIBIT NO. PAGE NO.                             |
| 9 (202) 551-4450                          | 9 38 E-Mail from John Youngdahl, Goldman 311             |
| 10 (202) 551-4819                         | 10 Sachs 7/12/01   |
| 11  | 11 39 Letter to A.B. Sporkin, Branch Chief, 324          |
| 12 On behalf of the Defendant:            | 12 Securities and Exchange Commission                    |
| 13 NICHOLAS THEODOROU, ESQ.               | 13   |
| 14 ROBERT TOONE, ESQ.                     | 14   |
| 15 Foley Hoag, LLP                        | 15   |
| 16 Seaport World Trade Center West        | 16   |
| 17 155 Seaport Boulevard                  | 17   |
| 18 Boston, MA 02210-2600                  | 18   |
| 19 (617) 832-1000                         | 19   |
| 20  | 20   |
| 21  | 21   |
| 22  | 22   |
| 23  | 23   |
| 24  | 24   |
| 25  | 25   |
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| 1 APPEARANCES (Cont):                     | 1 PROCEEDINGS  |
| 2   | 2 THE VIDEOGRAPHER: Here marks the                       |
| 3 On behalf of the Witness:               | 3 beginning of volume number II in the videotaped        |
| 4 MARK STANCIL, ESQ.                      | 4 deposition of Peter Davis, taken by counsel for the    |
| 5 Baker Botts, LLP                        | 5 defendant in the matter of the United States           |
| 6 The Warner                              | 6 Securities and Exchange Commission versus              |
| 7 1299 Pennsylvania Avenue, NW            | 7 Steven E. Nothern in the United States District Court  |
| 8 Washington, D.C. 20004-2400             | 8 for the District of Massachusetts, Boston Division,    |
| 9 (202) 639-7894                          | 9 Civil Action Number 05-10983 (NMG).                    |
| 10  | 10 This deposition is being held in the                  |
| 11 ALSO PRESENT:                          | 11 offices of Securities and Exchange Commission located |
| 12 Michael Luetbecker, Videographer       | 12 at 100 F Street, Northeast in Washington D.C. on this |
| 13  | 13 date, April 20th, 2006.                               |
| 14  | 14 The time indicated on the video screen,               |
| 15  | 15 9:44:58.  |
| 16  | 16 My name is Michael Luetbecker. I'm the                |
| 17  | 17 legal video specialist. The court reporter today is   |
| 18  | 18 Penny Dean, we are employed by Alderson Reporting.    |
| 19  | 19 Counsel will now introduce themselves and             |
| 20  | 20 the parties they represent, after which the court     |
| 21  | 21 reporter will administer the oath to the witness.     |
| 22  | 22 MR. THEODOROU: Nicholas Theodorou, Foley              |
| 23  | 23 Hoag, Boston, Mass, representing the defendant,       |
| 24  | 24 Steven Nothern.                                       |
| 25  | 25 MR. TOONE: Robert Toone, Foley Hoag of                |

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|---|--|
| <p>1 Boston representing the defendant, Steven Nothern.</p> <p>2 MS. WILLIAMS: Erica Williams representing</p> <p>3 the United States Securities and Exchange Commission.</p> <p>4 MR. ROSSETTI: Jonathan Rossetti</p> <p>5 representing the United States Commission, in the</p> <p>6 United States Securities and Exchange Commission as</p> <p>7 well.</p> <p>8 MR. STANCIL: Michael Stancil, Baker</p> <p>9 Botts, Washington, D.C. representing Peter Davis.</p> <p>10 Whereupon,</p> <p>11 PETER DAVIS, JR.,</p> <p>12 was called as a witness by counsel for Defendant, and</p> <p>13 having been previously duly sworn by the Notary</p> <p>14 Public, was examined and testified further as</p> <p>15 follows:</p> <p>16 EXAMINATION BY COUNSEL FOR DEFENDANT</p> <p>17 BY MR. THEODOROU:</p> <p>18 Q. Good morning, Mr. Davis -- oh, I think I</p> <p>19 was going to indicate that he's still under oath.</p> <p>20 Good morning, Mr. Davis, my name is Nick</p> <p>21 Theodorou. I represent Mr. Nothern in this matter as</p> <p>22 you know. And this is a continuation of your</p> <p>23 deposition that started yesterday on April 19th. You</p> <p>24 remain under oath during this deposition.</p> <p>25 I will be asking you several questions</p> | <p>1 Q. Great. Mr. Davis, yesterday you were</p> <p>2 asked by Ms. Williams about agreements that you may</p> <p>3 have had with the Treasury Department regarding</p> <p>4 confidentiality and maintaining the confidentiality</p> <p>5 of information that you obtained from the Treasury</p> <p>6 Department, do you remember that?</p> <p>7 A. Yes.</p> <p>8 Q. All right. Other than the agreement you</p> <p>9 testified about yesterday, that is an agreement with</p> <p>10 Mr. Anderson, did you have any other kind of</p> <p>11 agreement with the Treasury Department regarding</p> <p>12 confidentiality of information?</p> <p>13 A. No.</p> <p>14 Q. Could you have any agreement with an</p> <p>15 official at the Department of the Treasury regarding</p> <p>16 confidentiality of information as opposed to simply</p> <p>17 the Department of the Treasury?</p> <p>18 A. Oh --</p> <p>19 MS. WILLIAMS: Objection.</p> <p>20 THE WITNESS: The agreement I signed was</p> <p>21 with the Treasury Department, not with any particular</p> <p>22 official.</p> <p>23 BY MR. THEODOROU:</p> <p>24 Q. Okay. Did you have any agreement</p> <p>25 concerning confidentiality of Treasury Department of</p> |
| Page 258  | Page 260   |
| <p>1 this morning. If you have a problem understanding</p> <p>2 any questions, you can ask me to clarify them. If</p> <p>3 there is something that you want -- where you want to</p> <p>4 consult with your counsel, you may consult with your</p> <p>5 counsel if we're dealing with any privilege matters</p> <p>6 or work product.</p> <p>7 If you think at any point you need a break</p> <p>8 in the deposition, just tell me and we'll move on</p> <p>9 from there.</p> <p>10 The stipulations that are in effect are</p> <p>11 the same as yesterday.</p> <p>12 Ms. Williams?</p> <p>13 MS. WILLIAMS: Yes.</p> <p>14 MR. THEODOROU: That is all objections</p> <p>15 except as to matter of form, including motions to</p> <p>16 strike, including objections to hearsay are reserved</p> <p>17 until the time of trial.</p> <p>18 In terms of the exhibits, the parties have</p> <p>19 agreed we will continue with the numerical order of</p> <p>20 the exhibits from yesterday. So you have those</p> <p>21 before you, Mr. Davis.</p> <p>22 THE WITNESS: Yes, I do.</p> <p>23 BY MR. THEODOROU:</p> <p>24 Q. Do you understand what I just said?</p> <p>25 A. Yes.</p>   | <p>1 information with any other department other than the</p> <p>2 Department of Treasury?</p> <p>3 MS. WILLIAMS: Objection.</p> <p>4 THE WITNESS: No.</p> <p>5 BY MR. THEODOROU:</p> <p>6 Q. All right. So the only agreement you had</p> <p>7 was one agreement, correct?</p> <p>8 A. One agreement with the Department of</p> <p>9 Treasury, signed in Roger Anderson's office some time</p> <p>10 in 1994.</p> <p>11 Q. 1994.</p> <p>12 Now, when you met with Mr. Anderson, did</p> <p>13 you -- did he discuss the terms of the agreement with</p> <p>14 you?</p> <p>15 A. Very briefly and in a cursory fashion. I</p> <p>16 remember taking some time to attempt to read the</p> <p>17 whole thing with fine print and front and back of one</p> <p>18 page. I skimmed it and basically he said if you want</p> <p>19 him to get into these meetings, to get the charts,</p> <p>20 you have to agree to not divulge the information</p> <p>21 until the embargo time; I said fine and signed it.</p> <p>22 Q. And the agreement was one page with two</p> <p>23 sides filled in?</p> <p>24 A. Yes.</p> <p>25 Q. So the agreement actually was two pages?</p>   |

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|--|--|
| <p>1 A. Right.</p> <p>2 Q. In one document?</p> <p>3 A. Yes.</p> <p>4 Q. So it had a front side that had writing it</p> <p>5 on and a second side?</p> <p>6 A. That's right. And it seemed to be a form,</p> <p>7 it wasn't even necessarily a Treasury form and it had</p> <p>8 some blanks to fill in.</p> <p>9 Q. Did the agreement mention embargo in it?</p> <p>10 A. Whew.</p> <p>11 MS. WILLIAMS: Objection.</p> <p>12 MR. STANCIL: If you recall.</p> <p>13 THE WITNESS: I don't recall.</p> <p>14 BY MR. THEODOROU:</p> <p>15 Q. Did you review the agreement before you</p> <p>16 signed it?</p> <p>17 A. I took three or four minutes to read it in</p> <p>18 a cursory fashion, but said I was to keep the</p> <p>19 information I received confidential and it mentioned</p> <p>20 some U.S. code sections, if I didn't and I signed it,</p> <p>21 that was it.</p> <p>22 Q. So the agreement as best you can recall</p> <p>23 said what?</p> <p>24 A. That I --</p> <p>25 MS. WILLIAMS: Objection, sorry.</p>  | <p>1 A. Anderson signed it, I signed it and he had</p> <p>2 an assistant there who signed it as a witness.</p> <p>3 Q. And do you remember who that assistant</p> <p>4 was?</p> <p>5 A. No.</p> <p>6 Q. How long did the meeting with Mr. Anderson</p> <p>7 last?</p> <p>8 A. Ten minutes.</p> <p>9 Q. Did you obtain a copy of the agreement</p> <p>10 after you signed it?</p> <p>11 A. Yes.</p> <p>12 Q. After you got the agreement, what did you</p> <p>13 do with it?</p> <p>14 A. Took it back to my office and filed it.</p> <p>15 Q. Was there a particular file that you put</p> <p>16 it in?</p> <p>17 A. It was a file folder, it was -- years</p> <p>18 later I discovered it wasn't even marked, it was just</p> <p>19 a blank file folder sitting next to my quarterly</p> <p>20 refunding file.</p> <p>21 Q. Did you ever show that agreement to</p> <p>22 anybody else?</p> <p>23 A. No.</p> <p>24 Q. Did you discuss the contents of that</p> <p>25 agreement with anybody else?</p> |
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| <p>1 THE WITNESS: -- was to withhold, divulging</p> <p>2 any information that I obtained from the quarterly</p> <p>3 refunding meetings, you know, until it was authorized</p> <p>4 for public release.</p> <p>5 BY MR. THEODOROU:</p> <p>6 Q. Did the agreement define what embargo</p> <p>7 meant?</p> <p>8 MS. WILLIAMS: Objection.</p> <p>9 THE WITNESS: Not that I recall.</p> <p>10 MR. STANCIL: Make sure you -- wait for</p> <p>11 him to finish the question, give her a chance --</p> <p>12 MR. THEODOROU: We have plenty of time,</p> <p>13 don't worry about it. Listen to the question and</p> <p>14 then you can answer it.</p> <p>15 BY MR. THEODOROU:</p> <p>16 Do you remember the agreement defining</p> <p>17 embargo?</p> <p>18 MS. WILLIAMS: Objection.</p> <p>19 THE WITNESS: I don't recall seeing the</p> <p>20 word embargo in the agreement, there was no</p> <p>21 definition section, there was -- I just don't recall</p> <p>22 that much about the agreement.</p> <p>23 BY MR. THEODOROU:</p> <p>24 Q. Were you the only party whose signature</p> <p>25 appears in the agreement?</p> | <p>1 A. No.</p> <p>2 Q. So it's fair to say you never discussed</p> <p>3 the contents of that agreement with Mr. Nothorn,</p> <p>4 correct?</p> <p>5 A. Correct.</p> <p>6 Q. Where was the agreement signed?</p> <p>7 A. On the back, on the second page, bottom of</p> <p>8 the second page.</p> <p>9 Q. Physically where were you when at the time</p> <p>10 when you signed it?</p> <p>11 A. In Roger Anderson's office at the Treasury</p> <p>12 Department.</p> <p>13 Q. Did you ever discuss the existence of the</p> <p>14 agreement with anybody else?</p> <p>15 A. No.</p> <p>16 Q. So that it is fair to say you didn't</p> <p>17 discuss the existence of that agreement with your</p> <p>18 customers?</p> <p>19 A. No.</p> <p>20 Q. And you never discussed the existence of</p> <p>21 the agreement with Mr. Nothorn, correct?</p> <p>22 A. Correct.</p> <p>23 Q. Did you ever tell your customers what</p> <p>24 embargo meant?</p> <p>25 A. No.</p>                                    |

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|---|--|
| <p>1 Q. So you never told Mr. Nothorn what embargo<br/>2 meant?</p> <p>3 A. That's right, it just never came up.</p> <p>4 Q. Now, yesterday you were asked -- you were<br/>5 asked several questions about your dealings with<br/>6 Treasury and I just want to clarify some of them.<br/>7 And so if we could proceed in chronological fashion<br/>8 that would be great.</p> <p>9 When was the first time that you ever<br/>10 entered the Treasury building as a consultant? I<br/>11 understand this may be difficult to a specific<br/>12 recollection, but approximately when was the first<br/>13 time you entered the Treasury Department as a<br/>14 consultant?</p> <p>15 A. You mean after I started my own business,<br/>16 not when I was working for Prudential, not when I was<br/>17 working on the Hill?</p> <p>18 Q. Yes, actually when you started your own<br/>19 business, I want to focus on that.</p> <p>20 A. Okay. I mean, I was in that building so<br/>21 often it's hard to pick out a first time. I mean I<br/>22 co founded a professional group of the tax economists<br/>23 in Washington and we would meet regularly at Treasury<br/>24 every two weeks, throughout that whole period, so I<br/>25 don't recall the specific time, but I mean I was in</p>                               | <p>1 the late '80s or '90s, you had to call ahead to get<br/>2 put on the Secret Service computer and get a badge<br/>3 when you entered the building. I don't recall when<br/>4 that procedure was initiated.</p> <p>5 Q. Now, other than the meetings for the<br/>6 economists where at some point had you to get a<br/>7 badge, did you have to get a badge for other meetings<br/>8 at the Treasury Department?</p> <p>9 A. Well, whenever they instituted that<br/>10 system, I had to get a badge for every meeting.</p> <p>11 Q. Did you have a badge for the refunding<br/>12 conferences?</p> <p>13 A. Yes.</p> <p>14 Q. And again when did you start attending<br/>15 refunding conferences?</p> <p>16 A. To the best of my recollection, sometime<br/>17 in 1994, I don't recall which -- whether it was the<br/>18 May or August or even the November meeting, it was<br/>19 some time that year.</p> <p>20 Q. And why did you again start attending<br/>21 those refunding conferences?</p> <p>22 A. For the sole purpose to be able to get<br/>23 copies of what's called a chart book and other<br/>24 documents associated with refunding, which become<br/>25 public documents when the meeting is concluded and</p>  |
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| <p>1 that building for that professional group meetings on<br/>2 Wednesday morning every other week, they weren't<br/>3 always at Treasury, sometimes they were at other<br/>4 locations, but once in a while they were at Treasury.</p> <p>5 I would often come down to visit with<br/>6 people at Treasury when I was in the area, I just<br/>7 call up and say, hey, can I come in and pick up that<br/>8 report you just put out on the tax bill or something,<br/>9 these were in the days before the web, so it was<br/>10 important to physically retrieve documents.</p> <p>11 Q. When did you start that group of<br/>12 economists?</p> <p>13 A. In 1983, just before I left the Senate<br/>14 Budget Committee, it's called the Tax Economists<br/>15 Forum.</p> <p>16 Q. Did you have to get any credentials to<br/>17 enter the Treasury Department for those meetings?</p> <p>18 A. No.</p> <p>19 Q. Did you have to get prior approval to<br/>20 enter the Treasury Department for those meetings?</p> <p>21 A. Um, there came a time when I did, I don't<br/>22 remember when that started. It used to be, just like<br/>23 the Capitol, you could just walk into it. At some<br/>24 point in the '90s, security started tightening up, I<br/>25 don't recall exactly when that was. At some point in</p> | <p>1 the embargo time expires. And I had been going to<br/>2 pick up those public documents at the messenger<br/>3 window and sometimes they didn't have them and so I<br/>4 was told that the only way I could be sure to be able<br/>5 to get the documents when they became public was to<br/>6 start attending the meetings.</p> <p>7 Q. And who told you that?</p> <p>8 A. I think it was Lulu Tyler, but I couldn't<br/>9 swear to it, it was an assistant to Roger Anderson or<br/>10 possibly Paul Malvey, whoever I was dealing with to<br/>11 get the documents.</p> <p>12 Q. After she told you that or someone else<br/>13 told you that, what did you do?</p> <p>14 A. Well, at her suggestion, I wrote a letter<br/>15 to Roger Anderson and requested authorization to<br/>16 attend the meetings for the purpose of getting the<br/>17 documents.</p> <p>18 Q. Mr. Anderson's position in 1994 was what?</p> <p>19 A. Assistant secretary for I think it was<br/>20 financial markets or public finance or I forget the<br/>21 exact title.</p> <p>22 Q. Did you know him before you met with him?</p> <p>23 A. I met him maybe twice at public meetings<br/>24 where he had spoken or say at the National<br/>25 Association of Business Economists meetings where he</p> |

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| <p>1 spoke.</p> <p>2 Q. And how soon after you sent your letter?</p> <p>3 Actually -- strike that.</p> <p>4 Do you remember when you sent the letter?</p> <p>5 A. It was some time in 1994, a month or two.</p> <p>6 I don't know, it was some -- I went to pick up</p> <p>7 documents, I couldn't get them, I called up asking</p> <p>8 for them, I still couldn't get them and then was told</p> <p>9 well, maybe you should start attending the meetings,</p> <p>10 when that happened I just wrote a letter to him.</p> <p>11 Q. How soon after you wrote the letter did</p> <p>12 you meet with Mr. Anderson?</p> <p>13 A. I got a call from him a few days later and</p> <p>14 was told if I wanted to attend the meetings to come</p> <p>15 on down and meet with him briefly to sign a</p> <p>16 confidentiality agreement and so I did that, we</p> <p>17 made -- we made an arrangement to do that the next</p> <p>18 day or the day after.</p> <p>19 Q. Other than yourself, do you know ever</p> <p>20 anybody else who ever signed one of these</p> <p>21 confidentiality agreements?</p> <p>22 A. As far as I know, I'm the only one. I</p> <p>23 mean, I never saw anybody attending those meetings</p> <p>24 except Prudential Press and me.</p> <p>25 Q. And after you speak to Mr. Anderson, you</p> | <p>1 MS. WILLIAMS: Objection.</p> <p>2 THE WITNESS: I don't recollect whether it</p> <p>3 specifically mentioned Treasury refunding meetings or</p> <p>4 not, it -- it had some language about certain</p> <p>5 meetings at Treasury, but I don't recall how well</p> <p>6 identified they were in the document.</p> <p>7 BY MR. THEODOROU:</p> <p>8 Q. Well, let me ask a series of questions,</p> <p>9 maybe it will refresh your recollection.</p> <p>10 A. Sure, sure.</p> <p>11 Q. My first question was, do you remember if</p> <p>12 it just applied to refunding conferences?</p> <p>13 A. I don't recall.</p> <p>14 MS. WILLIAMS: Objection.</p> <p>15 BY MR. THEODOROU:</p> <p>16 Q. Do you remember if it applied to all</p> <p>17 Treasury meetings?</p> <p>18 MS. WILLIAMS: Objection.</p> <p>19 THE WITNESS: I don't recall it being that</p> <p>20 broad.</p> <p>21 BY MR. THEODOROU:</p> <p>22 Q. Okay. Do you remember if it applied to</p> <p>23 all Treasury information disclosed to you in any</p> <p>24 context by anybody at Treasury?</p> <p>25 MS. WILLIAMS: Objection.</p>  |
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| <p>1 then met with him in the meeting you just testified</p> <p>2 about yesterday and today?</p> <p>3 A. That's correct.</p> <p>4 Q. Did Mr. Anderson say anything about other</p> <p>5 people signing this kind of an agreement at that</p> <p>6 meeting?</p> <p>7 A. He didn't say anything like that.</p> <p>8 Q. Do you know if members of the press signed</p> <p>9 this agreement?</p> <p>10 A. I have no idea.</p> <p>11 Q. Did Mr. Anderson -- I'll get to that.</p> <p>12 Did that agreement just apply to you?</p> <p>13 MS. WILLIAMS: Objection.</p> <p>14 THE WITNESS: I assumed it did. I mean it</p> <p>15 had a blank for Anderson's name as the authorizing</p> <p>16 officer to, you know, and it had a blank for my name</p> <p>17 and, you know, it went through all this legalese and</p> <p>18 at the end it had places for signature.</p> <p>19 BY MR. THEODOROU:</p> <p>20 Q. You testified earlier that you reviewed</p> <p>21 the agreement before you signed it?</p> <p>22 A. That's correct.</p> <p>23 Q. Did the agreement only apply to a</p> <p>24 particular Treasury refunding conference or to the</p> <p>25 Treasury refunding conference?</p>   | <p>1 THE WITNESS: It -- it didn't, it was not</p> <p>2 that -- it didn't say that.</p> <p>3 BY MR. THEODOROU:</p> <p>4 Q. Okay. So it wasn't that broad.</p> <p>5 A. It was -- it was defined. I just can't</p> <p>6 recall with specificity how well it was defined.</p> <p>7 Q. Now I'd like to ask you what your</p> <p>8 understanding of what your duties were under the</p> <p>9 agreement were.</p> <p>10 A. Right.</p> <p>11 Q. What did you agree to do under that</p> <p>12 agreement or not to do?</p> <p>13 A. I agreed as a condition of attending the</p> <p>14 Treasury refunding meetings to keep confidential the</p> <p>15 information I received at those meetings until they</p> <p>16 were authorized for public disclosure and I don't</p> <p>17 recall the document using the word embargo, it had</p> <p>18 some other language.</p> <p>19 Q. Did Mr. Anderson mention the word embargo</p> <p>20 to you?</p> <p>21 MS. WILLIAMS: Objection.</p> <p>22 THE WITNESS: I don't recall that he did.</p> <p>23 I mean, I don't recall the word embargo in the</p> <p>24 document or in the conversation or in the discussion.</p> <p>25 It was a ten-minute meeting.</p> |

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| <p>1 BY MR. THEODOROU:</p> <p>2 Q. Do you recall whether Mr. Anderson defined</p> <p>3 for you what embargo meant under Treasury</p> <p>4 regulations?</p> <p>5 MS. WILLIAMS: Objection.</p> <p>6 THE WITNESS: That definitely did not</p> <p>7 happen.</p> <p>8 BY MR. THEODOROU:</p> <p>9 Q. Did anyone at Treasury ever explain to you</p> <p>10 what the term embargo means in the context of</p> <p>11 Treasury press conferences?</p> <p>12 MS. WILLIAMS: Objection.</p> <p>13 THE WITNESS: No, just -- it just didn't</p> <p>14 happen.</p> <p>15 BY MR. THEODOROU:</p> <p>16 Q. Did anyone ever explain to you what the</p> <p>17 term embargo meant in the context of refunding</p> <p>18 conferences?</p> <p>19 MS. WILLIAMS: Objection.</p> <p>20 THE WITNESS: No.</p> <p>21 BY MR. THEODOROU:</p> <p>22 Q. Now, yesterday do you remember you</p> <p>23 testified that by working in government, you came to</p> <p>24 understand generally what embargo meant.</p> <p>25 A. That's correct.</p>   | <p>1 of Congress for that all day until it was publicly</p> <p>2 released, and so obviously that was a little looser</p> <p>3 embargo and in the sense that it was released on sort</p> <p>4 of the background basis so that when we held the</p> <p>5 hearing with the Secretary of Treasury, you know, I</p> <p>6 was responsibility for those hearings at the Senate</p> <p>7 Budget Committee, so, you know, that way I could</p> <p>8 write questions for the chairman of the committee to</p> <p>9 ask the Secretary when he came up.</p> <p>10 And sometimes maybe I had to consult with</p> <p>11 some experts, somewhere else on the Hill about how to</p> <p>12 formulate that question, by just asking that it was</p> <p>13 sort of cross, you know, possibly crossing a line</p> <p>14 because I wasn't divulging necessarily what was in</p> <p>15 the budget but by the nature of the question, maybe</p> <p>16 somebody could figure it out. There were various</p> <p>17 gradations of confidentiality.</p> <p>18 Q. Can you think of any other instances</p> <p>19 besides the one you just described and the one</p> <p>20 relating to the Department of Labor where there may</p> <p>21 be differences in what embargo meant within the</p> <p>22 government?</p> <p>23 MS. WILLIAMS: Objection.</p> <p>24 THE WITNESS: Well, you know, another</p> <p>25 thing that would happen fairly regularly would be</p>                            |
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| <p>1 Q. All right. Isn't it true that embargo has</p> <p>2 different definitions for different government</p> <p>3 agencies under the regulations?</p> <p>4 MS. WILLIAMS: Objection.</p> <p>5 THE WITNESS: I'm not familiar with</p> <p>6 regulations, but I am aware of different kinds of</p> <p>7 embargoes.</p> <p>8 BY MR. THEODOROU:</p> <p>9 Q. All right. What different kinds of</p> <p>10 embargoes are you aware of if based on your</p> <p>11 experience in government?</p> <p>12 A. Some of them are very stringent like at</p> <p>13 the Bureau of Labor and Statistics when they release</p> <p>14 the CPI or the employment data, they actually take</p> <p>15 reporters into the room and lock it up and they don't</p> <p>16 open the door until a certain time.</p> <p>17 On the Hill, we would actually receive,</p> <p>18 regularly receive confidential government documents</p> <p>19 like the President's budget or his tax proposals,</p> <p>20 like a day before it was authorized for public</p> <p>21 release.</p> <p>22 It would say Printed on the front of it,</p> <p>23 embargoed until Monday at Noon or a date in time and</p> <p>24 we would be walking around openly discussing that</p> <p>25 among ourselves in the hearing rooms and the hallways</p> | <p>1 that when we were about to release a conference</p> <p>2 agreement on the tax bill which is the public</p> <p>3 disclosure of the final details of a tax bill, when I</p> <p>4 worked on the Joint Committee on Taxation, there</p> <p>5 would be a briefing for the Press and it would be</p> <p>6 embargoed for a certain time and not always, but</p> <p>7 sometimes the Press would have questions, I mean</p> <p>8 they'd write the story, they'd ship it back to their</p> <p>9 editors at the paper, the editors would read it and</p> <p>10 rewrite it and then come back with a whole bunch</p> <p>11 questions.</p> <p>12 A lot of the times the questions were</p> <p>13 regarding the revenue cost provision, which was one</p> <p>14 of the things that the agreement would identify and</p> <p>15 I'd get questions about those numbers because I</p> <p>16 created them or I was the economist who formulated</p> <p>17 them on the computer model that I used, so I'd get</p> <p>18 calls from people, from Press before the embargo time</p> <p>19 saying what does that mean and amplifying on it so</p> <p>20 they could get the story right before they released</p> <p>21 it.</p> <p>22 Now, I have no way of knowing whether they</p> <p>23 honored that embargo or not. Actually I can think of</p> <p>24 a few instances where papers decided to go ahead and</p> <p>25 publish some information because a member of Congress</p> |

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| <p>1 had walked out of the meeting and started talking<br/>2 publicly about it and then the paper decided because<br/>3 of that the embargo no longer applied and that<br/>4 happened all the time too.<br/>5 And so when I was a staffer on the Hill,<br/>6 there were always gray areas about what should be<br/>7 released when. But when someone called me up and I<br/>8 knew they were writing a story that was going on the<br/>9 front page after major newspaper, I always felt I was<br/>10 under an obligation to make sure that reporter<br/>11 understood, because once they published something<br/>12 wrong, it creates huge problems.<br/>13 There were many instances where<br/>14 information from the President's budget and<br/>15 information for tax bills were publicly disclosed by<br/>16 newspapers in advance of embargo time where a public<br/>17 official had disclosed it first. And so, you know,<br/>18 sometimes I didn't know whether the public official<br/>19 had disclosed it or not and, you know, that put me in<br/>20 an uncomfortable position, so I'd take a message and<br/>21 I would call up to the front office and find out,<br/>22 hey, is this divulged yet or not.<br/>23 BY MR. THEODOROU:<br/>24 Q. So in your experience there on the Hill,<br/>25 there was a wide variation how different government</p> | <p>1 each of those meetings, someone would stand up and<br/>2 say okay, here's the time at which you can disclose<br/>3 this, here's the embargo time.<br/>4 Q. Okay.<br/>5 A. So they would announce a time.<br/>6 Q. Did you --<br/>7 A. I was supposed to keep it confidential<br/>8 until that time.<br/>9 Q. Did you ever tell any of your customers<br/>10 what embargo time meant?<br/>11 A. No.<br/>12 Q. So it's fair to say you didn't tell<br/>13 Mr. Nothem about what it meant by embargo time?<br/>14 MS. WILLIAMS: Objection.<br/>15 THE WITNESS: Correct.<br/>16 BY MR. THEODOROU:<br/>17 Q. You also never said anything else --<br/>18 excuse me -- strike that.<br/>19 Strike my own inability to form the<br/>20 sentence.<br/>21 You never -- you also never sent anything<br/>22 out in writing that provided a definition of what<br/>23 embargo time meant, correct?<br/>24 A. Correct.<br/>25 MS. WILLIAMS: Objection.</p>  |
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| <p>1 agencies used that term embargo; is that right?<br/>2 MS. WILLIAMS: Objection.<br/>3 THE WITNESS: That's correct. And no<br/>4 where in my experience did I ever see a clear legal<br/>5 definition that I was presented with on the Hill or<br/>6 Treasury or anywhere else.<br/>7 BY MR. THEODOROU:<br/>8 Q. And you never provided any kind of<br/>9 definition of what embargo meant in the context of<br/>10 refunding conferences to your customers; is that<br/>11 right?<br/>12 A. That's right.<br/>13 MS. WILLIAMS: Objection.<br/>14 BY MR. THEODOROU:<br/>15 Q. Including not providing anything to<br/>16 Mr. Nothem about what embargo meant?<br/>17 MS. WILLIAMS: Objection.<br/>18 THE WITNESS: That's right.<br/>19 BY MR. THEODOROU:<br/>20 Q. Under the agreement you testified about<br/>21 yesterday and today with Mr. Anderson, what was your<br/>22 understanding of when your duty not to disclose the<br/>23 information ended? In other words, when could you<br/>24 disclose?<br/>25 A. My understanding was it was at the end of</p>   | <p>1 THE WITNESS: That's correct.<br/>2 BY MR. THEODOROU:<br/>3 Q. So let me see if I've got this right.<br/>4 Was it your understanding if an embargo<br/>5 ended at 10:00 a.m., you were free to disclose it at<br/>6 one second after 10:00 a.m.?<br/>7 A. That's correct.<br/>8 MS. WILLIAMS: Objection.<br/>9 BY MR. THEODOROU:<br/>10 Q. Who did the embargo in the con -- what was<br/>11 your understanding as to who the embargo -- strike<br/>12 that.<br/>13 What was your understanding as to who was<br/>14 bound by the embargo refunding conferences?<br/>15 A. My understanding was it was I mean just<br/>16 from watching it happen was that it applied to me and<br/>17 to the Press who were present.<br/>18 Q. So everyone in the Press who attended; is<br/>19 that right?<br/>20 A. Right.<br/>21 Q. It applied to you?<br/>22 A. Right.<br/>23 Q. Did it apply to every one who attended the<br/>24 conference?<br/>25 A. I assumed the Treasury officials would not</p> |

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| <p>1 disclose it before the time and of course members of</p> <p>2 the Treasury Borrowing Committee would be sitting</p> <p>3 there and I assumed that they had some sort of</p> <p>4 agreements as a condition of being part of that</p> <p>5 committee to honor that also.</p> <p>6 Q. And what is the Borrowing Committee?</p> <p>7 A. It's composed of leading Wall Street</p> <p>8 investors who are the main purchasers and marketers</p> <p>9 of Treasury debt.</p> <p>10 Q. Now, do you know if they have an agreement</p> <p>11 with Treasury like you did?</p> <p>12 A. I've never seen one or heard of one so I</p> <p>13 can't say, but -- I always assumed there must have</p> <p>14 been one for them.</p> <p>15 Q. In October of 2001, do you know who some</p> <p>16 of the members of the committee were?</p> <p>17 A. Geez. I could name a few of them, I</p> <p>18 think. My problem -- the haziness of my recollection</p> <p>19 is were they members earlier and had they gone off or</p> <p>20 were they there at that particular meeting in</p> <p>21 October. I think Jim Capra of Capra Asset was a</p> <p>22 chair.</p> <p>23 Q. He was one of your customers.</p> <p>24 MS. WILLIAMS: Objection.</p> <p>25 BY MR. THEODOROU:</p> | <p>1 the quarterly refundings and all that information all</p> <p>2 the way back I think to '95.</p> <p>3 Q. And where is Capra Asset Management</p> <p>4 located.</p> <p>5 A. They are in Rye, New York.</p> <p>6 Q. Besides the borrowing committee, who else</p> <p>7 would attend the refunding conference?</p> <p>8 A. Well, various Press members, there was</p> <p>9 myself and then there would be various Treasury</p> <p>10 officials and staff.</p> <p>11 Q. Now, I may have asked this. Do you know</p> <p>12 if the Press members signed a confidentiality</p> <p>13 agreement like yours?</p> <p>14 A. I've never seen one, I have no idea.</p> <p>15 Q. Did you know members of the Press?</p> <p>16 A. Well, sure.</p> <p>17 Q. Do you remember who were some of the Press</p> <p>18 members who attended the October 2001 conference?</p> <p>19 A. Hmm, it's hard to say for sure because I'd</p> <p>20 see most of them most of the time at most of the</p> <p>21 quarterly refunding meetings.</p> <p>22 My recollection about who specifically was</p> <p>23 at that particular meeting, it's hard to say. I'm</p> <p>24 blanking on the name of the one guy who I'm pretty</p> <p>25 sure was there.</p>     |
| Page 282  | Page 284  |
| <p>1 Q. Correct?</p> <p>2 A. Correct. I think Dan Ahearn was there.</p> <p>3 Q. Dan Ahearn. How do you spell Ahearn?</p> <p>4 A. A-h-e-a-r-n.</p> <p>5 Q. From where?</p> <p>6 A. I forget the name of the firm he worked</p> <p>7 for, he used to work for Wellington but he didn't at</p> <p>8 that time. Those are the only ones I could name.</p> <p>9 You know, there does exist -- every quarterly</p> <p>10 refunding meeting would issue the minutes of the</p> <p>11 meeting of that advisory committee and it would list</p> <p>12 every member of the committee who attended.</p> <p>13 Q. And the minutes are public?</p> <p>14 A. Yes, they are public information.</p> <p>15 Q. If we wanted to get ahold of those</p> <p>16 minutes, how do we go about doing that?</p> <p>17 A. They are on the Treasury website right</p> <p>18 now.</p> <p>19 Q. How about for the minutes from October of</p> <p>20 2001?</p> <p>21 A. Yeah, all of that's there. Treasury some</p> <p>22 time in '99 or maybe as late as 2000 went back and</p> <p>23 put on their website all the quarterly refunding</p> <p>24 charts, advisory committee minutes and advisory</p> <p>25 committee recommendations and the press releases and</p>                     | <p>1 It will come to me in a second, he worked</p> <p>2 for the G-7 group now. It will come to me.</p> <p>3 Q. Did they use sign-in sheets for these</p> <p>4 conferences?</p> <p>5 A. No.</p> <p>6 Q. Do you remember a reporter named Brian</p> <p>7 Collins?</p> <p>8 A. Vaguely, the name sounds familiar if I saw</p> <p>9 a picture I might recognize him, but, you know, I was</p> <p>10 not a close -- I didn't know him well for sure, I</p> <p>11 might recognize him.</p> <p>12 Q. He worked for National Mortgage News, does</p> <p>13 that ring any bell?</p> <p>14 A. It doesn't ring any bells.</p> <p>15 Q. Now, what was your understanding of again</p> <p>16 of what this embargo, what they termed your</p> <p>17 confidentiality duty was, what was your understanding</p> <p>18 of what it prevented you from doing?</p> <p>19 A. It prevented me from informing anyone</p> <p>20 before that time. I mean the reason for the embargo</p> <p>21 was to give reporters a time to prepare their story</p> <p>22 so they would be ready to go out at that time.</p> <p>23 Q. Did anyone explain to you that was the</p> <p>24 reason for the embargo?</p> <p>25 A. No, I just sort of knew that and that's</p> |

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|---|---|
| <p>1 how --</p> <p>2 Q. But what I'm asking about, did anyone ever</p> <p>3 say to you, that's the reason we have the embargo?</p> <p>4 A. No, no one ever said that to me.</p> <p>5 Q. Did you ever read it anywhere, this is the</p> <p>6 reason --</p> <p>7 A. No, I didn't read it anywhere.</p> <p>8 Q. So nobody at Treasury, including</p> <p>9 Mr. Anderson ever told you why the embargo existed,</p> <p>10 correct?</p> <p>11 MS. WILLIAMS: Objection.</p> <p>12 THE WITNESS: Correct, correct.</p> <p>13 BY MR. THEODOROU:</p> <p>14 Q. Were you allowed to discuss embargoed</p> <p>15 information with other people who had attended the</p> <p>16 conference?</p> <p>17 A. Oh, we would -- as the meeting was</p> <p>18 breaking up, sometimes I would discuss it with</p> <p>19 another reporter or someone who's attending the</p> <p>20 meeting, sometimes in the hallway, I'd talk with Jim</p> <p>21 Capra or someone afterward, usually we weren't</p> <p>22 talking about what was happening in the meeting, we</p> <p>23 were talking about what was going on with the tax cut</p> <p>24 or what was going on with the budget or the deficit.</p> <p>25 So sometimes though there might be a confusion that</p> | <p>1 MS. WILLIAMS: Objection.</p> <p>2 THE WITNESS: They got better quality</p> <p>3 reporting and information to -- to the greater world.</p> <p>4 If -- if -- if reporters are forced to react quickly</p> <p>5 in a very time sensitive situation to very</p> <p>6 complicated information, it results in all kinds of</p> <p>7 spurious information going out and that was something</p> <p>8 that happened to me all the time when I worked on the</p> <p>9 Hill.</p> <p>10 BY MR. THEODOROU:</p> <p>11 Q. Do you remember if that agreement had an</p> <p>12 expiration date?</p> <p>13 MS. WILLIAMS: Objection.</p> <p>14 THE WITNESS: I don't -- I don't recall</p> <p>15 any expiration date. I don't think it had one. It</p> <p>16 wasn't a time certain agreement. I mean it didn't --</p> <p>17 it had -- I remember it had a date on the document</p> <p>18 itself or whatever day I signed it and we signed, you</p> <p>19 know, when we signed it, we signed our names and the</p> <p>20 date, but there was no effective date in the</p> <p>21 document, there was no termination date paragraph or</p> <p>22 anything like we have in tax laws.</p> <p>23 BY MR. THEODOROU:</p> <p>24 Q. So to your knowledge there was no renewal</p> <p>25 date in the document?</p>  |
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| <p>1 wasn't cleared up in the meeting and -- and</p> <p>2 sometimes, you know, as people were milling around as</p> <p>3 the meeting was breaking up, people would go up and</p> <p>4 ask an additional question or a point of</p> <p>5 clarification and so, sure, there were discussions in</p> <p>6 the room.</p> <p>7 Q. So your understanding was that under that</p> <p>8 agreement that you had with Mr. Anderson, you were</p> <p>9 not to disclose the information of the refunding</p> <p>10 conference until after the embargo time had expired,</p> <p>11 right?</p> <p>12 A. Correct.</p> <p>13 MS. WILLIAMS: Objection.</p> <p>14 BY MR. THEODOROU:</p> <p>15 Q. What did Treasury get out of this</p> <p>16 agreement?</p> <p>17 MS. WILLIAMS: Objection.</p> <p>18 BY MR. THEODOROU:</p> <p>19 Q. I can clarify that for you, usually when</p> <p>20 you have an agreement, one party gets something.</p> <p>21 A. Right.</p> <p>22 Q. Clearly you got access?</p> <p>23 A. Right.</p> <p>24 Q. To this information, what did Treasury get</p> <p>25 by allowing you in?</p>  | <p>1 A. No. In fact it was never renewed or</p> <p>2 terminated that I was aware of.</p> <p>3 Q. You testified about reporters attending</p> <p>4 the conference, could reporters share information</p> <p>5 with others before the embargo time expired on the</p> <p>6 condition that the people they were discussing it</p> <p>7 honor the embargo?</p> <p>8 MS. WILLIAMS: Objection.</p> <p>9 THE WITNESS: Yes. I mean I saw them --</p> <p>10 what would typically happen would be everybody would</p> <p>11 run out of the room, some of the reporters who were</p> <p>12 in the Treasury Press room would run down to their</p> <p>13 Treasury press room office, but some of the reporters</p> <p>14 didn't have space in there.</p> <p>15 There was only room in there for three</p> <p>16 reporters or something. So the rest of the reporters</p> <p>17 would actually run out in the hallway, pull out their</p> <p>18 cell phones and call in their stories to their</p> <p>19 editors, at least I assumed it was their editors, I</p> <p>20 didn't know who they were calling. And so there</p> <p>21 would all always be a bunch of reporters out in the</p> <p>22 hallway afterward talking on their phones presumably</p> <p>23 to their editors filing, you know, dictating a story</p> <p>24 which would be presumably released at the embargo</p> <p>25 time.</p> |

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|--|--|
| <p>1 BY MR. THEODOROU:</p> <p>2 Q. So there were cases where reporters called</p> <p>3 in information to somebody before the embargo time</p> <p>4 expired?</p> <p>5 A. For sure.</p> <p>6 MS. WILLIAMS: Objection.</p> <p>7 THE WITNESS: For sure.</p> <p>8 BY MR. THEODOROU:</p> <p>9 Q. Did you ever discuss with Anderson at your</p> <p>10 meeting the duration of the agreement, that is how</p> <p>11 long it would last or allow you to do what you wanted</p> <p>12 to do?</p> <p>13 MS. WILLIAMS: Objection.</p> <p>14 THE WITNESS: Never came up, it was</p> <p>15 never -- it was never discussed.</p> <p>16 BY MR. THEODOROU:</p> <p>17 Q. Based on your understanding of the</p> <p>18 agreement, the agreement allowed you to share</p> <p>19 information with others as long as they also honored</p> <p>20 the embargo, correct?</p> <p>21 MS. WILLIAMS: Objection.</p> <p>22 THE WITNESS: That was -- yes.</p> <p>23 BY MR. THEODOROU:</p> <p>24 Q. That was your understanding?</p> <p>25 A. Well, I was going to say that's what lead</p>  | <p>1 A. On Monday of the meeting week, I would at</p> <p>2 some point on Monday call up Lulu Tyler or whoever</p> <p>3 was at that phone number and make sure that I was</p> <p>4 cleared in, that they had my full name, they had my</p> <p>5 birth date and Social Security number and so that</p> <p>6 when I showed up to the Treasury window on Tuesday</p> <p>7 for the Tuesday meeting and -- say I showed up at</p> <p>8 8:45 or 8:30 or whenever it was, that I would be on</p> <p>9 the computer, that the guard would give me a badge</p> <p>10 and that I would be buzzed into the building to go</p> <p>11 upstairs and attend the meeting.</p> <p>12 Q. Now, were you already in the computer when</p> <p>13 you made the call? In other words, when you called</p> <p>14 Lulu, did she know to look you up and were in the</p> <p>15 computer and already signed off to attend the meeting</p> <p>16 or was it ad hoc, that is meeting by meeting?</p> <p>17 MS. WILLIAMS: Objection.</p> <p>18 THE WITNESS: Most of the time, she would</p> <p>19 tell me that she had already put me in and my call</p> <p>20 was just to guard against the possibility that</p> <p>21 somehow she had forgotten or she was on vacation or</p> <p>22 whatever, because once or twice my name wasn't on the</p> <p>23 list and I was in the position of having to call up</p> <p>24 to Paul Malvey's office and someone would actually</p> <p>25 come down and get me.</p> |
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| <p>1 me to -- disclosing information, starting in 1999 to</p> <p>2 Word McCarthy, because I knew he would keep the</p> <p>3 embargo.</p> <p>4 Q. But you didn't review the terms of your</p> <p>5 agreement with your customers, correct?</p> <p>6 A. Correct, that just never came up.</p> <p>7 Q. Which included not reviewing what embargo</p> <p>8 meant?</p> <p>9 A. Correct. It was just something that was</p> <p>10 never discussed.</p> <p>11 Q. Now, the agreement with Mr. Anderson, did</p> <p>12 anyone else at Treasury know about that agreement?</p> <p>13 A. Well, I had no way of knowing whether they</p> <p>14 knew it or not, all I knew is whether they let me</p> <p>15 into the meetings.</p> <p>16 Q. I think you testified about this earlier,</p> <p>17 you didn't tell anyone else about the agreement?</p> <p>18 MS. WILLIAMS: Objection.</p> <p>19 THE WITNESS: No. That's correct.</p> <p>20 BY MR. THEODOROU:</p> <p>21 Q. Now after you enter into this agreement</p> <p>22 you started attending the refunding conferences?</p> <p>23 A. Meetings, yes.</p> <p>24 Q. And what process did you follow in order</p> <p>25 to attend?</p> | <p>1 BY MR. THEODOROU:</p> <p>2 Q. When you say that she said you were</p> <p>3 already in the computer, what does that mean you were</p> <p>4 already in?</p> <p>5 A. I took that to mean that she had entered a</p> <p>6 list of names, I don't know if mine was the only name</p> <p>7 on that list or not of authorized persons to get a</p> <p>8 badge to go to that meeting.</p> <p>9 Q. And in 1994, what was Ms. Tyler's</p> <p>10 position?</p> <p>11 A. I don't recall her title, I just knew her</p> <p>12 as -- she was an assistant to either Mr. Malvey or</p> <p>13 Mr. Anderson and she was the person who was my</p> <p>14 contact for gaining authorization to attend the</p> <p>15 meeting.</p> <p>16 Q. So you would call her on Monday?</p> <p>17 A. Right.</p> <p>18 Q. And then what would happen?</p> <p>19 A. I'd say, Hi, Lulu, it is Pete Davis, just</p> <p>20 calling to make sure I'm on the computer to -- just</p> <p>21 on the computer to gain authorization of the meeting</p> <p>22 tomorrow. And she'd say, you're all set. And I'd</p> <p>23 say, thanks, and that was it.</p> <p>24 Q. And then what happened?</p> <p>25 A. The next morning on Tuesday, I would</p>  |

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| <p>1 appear at 15th Street entrance at Treasury, I'd<br/>2 present my I.D. to the guard and say I'm going up to<br/>3 the meeting in 3223 and he'd punch in my name and<br/>4 he'd hand me a badge.<br/>5 Q. And would you then go to 3223 unescorted?<br/>6 A. Yes.<br/>7 Q. Or would someone escort you?<br/>8 A. Yes, unescorted. I mean, I knew the<br/>9 building well. Yeah, but --<br/>10 MR. THEODOROU: Can we take a couple of<br/>11 minute break?<br/>12 MS. WILLIAMS: Sure.<br/>13 THE VIDEOGRAPHER: Going off the record,<br/>14 time on the screen is 10:32:12.<br/>15 (Recess.)<br/>16 THE VIDEOGRAPHER: Here marks the<br/>17 beginning of videotape number 2, going back on the<br/>18 record, the time on the screen is 10:48:12.<br/>19 BY MR. THEODOROU:<br/>20 Q. Mr. Davis, after you started attending the<br/>21 refunding conferences, were you ever barred from the<br/>22 conferences at any time?<br/>23 A. No.<br/>24 Q. Do you recall ever being prohibited from<br/>25 attending a conference?</p>  | <p>1 two of them attended.<br/>2 Q. Let's take a look at the first where it<br/>3 says Monday, it says call Lulu Tyler, correct?<br/>4 A. Correct.<br/>5 Q. And Lulu Tyler again was --<br/>6 A. She was the assistant to either Malvey<br/>7 or -- or Anderson who was the point of contact for<br/>8 gaining access to the meeting.<br/>9 Q. It says to get cleared into the meeting,<br/>10 do you see where it says that?<br/>11 A. Yes.<br/>12 Q. What is meant by to get cleared into the<br/>13 meeting?<br/>14 A. Well, when I wrote that, what I meant was<br/>15 to be able to get a badge from the guard at the<br/>16 Treasury and to attend the meeting.<br/>17 Q. Your assistant, what was your assistant's<br/>18 name again?<br/>19 A. Allyson Sullivan.<br/>20 Q. Did you review your confidentiality<br/>21 agreement you had with Mr. Anderson with Ms. Sullivan<br/>22 before she attended?<br/>23 A. No.<br/>24 Q. Did you review the terms of the agreement?<br/>25 A. No.</p> |
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| <p>1 A. It just never happened, I mean -- I never<br/>2 tried to attend any after October 31st, 2001.<br/>3 Q. Right. Now I'm talking about the period<br/>4 1994 to 2001?<br/>5 A. I was never barred, every meeting I asked<br/>6 to attend, I was able to attend.<br/>7 Q. If you would take a look at Exhibit 6,<br/>8 please?<br/>9 MR. TOONE: 16.<br/>10 MR. THEODOROU: I'm sorry, I misread my<br/>11 writing.<br/>12 BY MR. THEODOROU:<br/>13 Q. Now, Mr. Davis, what is this document?<br/>14 A. It's a description of the procedure for<br/>15 attending the quarterly refunding meeting from my<br/>16 assistant, Allyson Sullivan, to attend the January<br/>17 2001 -- actually it was the February refunding<br/>18 meeting, it was on January 31st, because I was going<br/>19 to be out of town.<br/>20 Q. And she was going to attend the meeting in<br/>21 your place?<br/>22 A. Correct.<br/>23 Q. Did she in fact attend the meeting?<br/>24 A. Yes. And I -- and I think my outgoing<br/>25 assistant, Kristen Caiola, attended also, I think the</p> | <p>1 Q. Did you inform her what she could and<br/>2 could not do?<br/>3 A. Yes.<br/>4 Q. Under that agreement?<br/>5 A. Well, I just said, you know, I'm trying to<br/>6 remember, um -- well, this is pretty<br/>7 self-explanatory, I just --<br/>8 Q. Right, but my question is do you recall<br/>9 telling her other than saying, Note embargo time, do<br/>10 you recall telling her what embargo meant?<br/>11 A. Oh --<br/>12 MS. WILLIAMS: Objection.<br/>13 THE WITNESS: No, I didn't -- I didn't.<br/>14 BY MR. THEODOROU:<br/>15 Q. Do you recall telling her that she could<br/>16 not disclose the information at the conference before<br/>17 the embargo time?<br/>18 MS. WILLIAMS: Objection.<br/>19 THE WITNESS: I didn't -- no, I didn't<br/>20 discuss that.<br/>21 BY MR. THEODOROU:<br/>22 Q. So you remember not discussing that with<br/>23 her?<br/>24 MS. WILLIAMS: Objection.<br/>25 THE WITNESS: I just wrote this memo and I</p>   |

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|---|---|
| <p>1 sat her down and gave her a copy and we read through</p> <p>2 it.</p> <p>3 BY MR. THEODOROU:</p> <p>4 Q. All right. Let's read through -- so</p> <p>5 whatever's in this memo is what you reviewed with</p> <p>6 her.</p> <p>7 A. That's right.</p> <p>8 Q. The next, there's another line where it</p> <p>9 says on Tuesday -- excuse me. It talks about turn</p> <p>10 left down the hallway, see where that paragraph is?</p> <p>11 A. Yeah. Those are physical instructions in</p> <p>12 how to navigate the building.</p> <p>13 Q. Take that to the third floor and go</p> <p>14 straight down the hall to room 3223, correct?</p> <p>15 A. Correct.</p> <p>16 Q. And what was room 3223?</p> <p>17 A. I forget what they call it, but it's very</p> <p>18 ornate meeting room right across from the Secretary</p> <p>19 of the Treasury's office.</p> <p>20 Q. Now, the January conference is held in</p> <p>21 room 3223, correct?</p> <p>22 A. Correct. All the quarterly refunding</p> <p>23 meetings were, with the one exception was the</p> <p>24 October 31 meeting, because it as going to be more</p> <p>25 heavily attended was shifted to another room.</p> | <p>1 assistant and she says I'm here in Pete Davis's</p> <p>2 place, it makes sense to sit where Pete Davis usually</p> <p>3 sat.</p> <p>4 Q. Except for the October conference, you</p> <p>5 didn't sit in the back left, you sat in the front,</p> <p>6 correct?</p> <p>7 A. Well, it was a different room, everything</p> <p>8 was different about the October 31 meeting from the</p> <p>9 other meetings.</p> <p>10 Q. Now directing your attention to the</p> <p>11 exhibit where it says Wednesday, do you see that?</p> <p>12 A. Yes.</p> <p>13 Q. It says in that paragraph, Take careful</p> <p>14 notes of anything Paul Malvey or anyone else says.</p> <p>15 A. Right.</p> <p>16 Q. What was Mr. Malvey's position at the</p> <p>17 time?</p> <p>18 A. He was the senior staff at the Treasury in</p> <p>19 charge of public debt issuance, I forget his exact</p> <p>20 title, but maybe it was something like Director of</p> <p>21 the Office of Federal Finance, I think it was or</p> <p>22 something like that.</p> <p>23 Q. Okay. And how long had you known</p> <p>24 Mr. Malvey?</p> <p>25 A. I forget exactly when I first met him, but</p>  |
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| <p>1 Q. And that was shifted to what room?</p> <p>2 A. I think it was 3211, the diplomatic room</p> <p>3 or something.</p> <p>4 Q. What is the difference between room 3233</p> <p>5 and 3211?</p> <p>6 A. Size.</p> <p>7 Q. Would you please describe 3211 for me?</p> <p>8 A. It was down the hall. It was a larger</p> <p>9 room, it permitted a large area of theater seating so</p> <p>10 you could seat 50 or 60 people.</p> <p>11 There was a podium at one end. 3223 was a</p> <p>12 smaller room with a big conference table in it and</p> <p>13 you could seat maybe, I don't know, maybe 20 people</p> <p>14 around the conference table and maybe another 10 or</p> <p>15 15 around the sides.</p> <p>16 Q. Now the next paragraph says sit on the</p> <p>17 back left, do you see where that --</p> <p>18 A. Right.</p> <p>19 Q. -- is in the document?</p> <p>20 A. Yes.</p> <p>21 Q. Why did you tell her to sit on the back</p> <p>22 left?</p> <p>23 A. Because that's where I usually sat and if</p> <p>24 she was going to get questioned on who she was or why</p> <p>25 she was there or something, you know, she's my</p>                                   | <p>1 it was some time in '93 or '94 or in the process of</p> <p>2 trying to get quarterly refunding documents and also</p> <p>3 in bringing clients in to meet with Treasury</p> <p>4 officials about what was going on with the economy</p> <p>5 and debt management and so on.</p> <p>6 Q. And what was your relationship with him?</p> <p>7 A. It was a professional relationship. I saw</p> <p>8 him once in a while in Treasury, once in a while he</p> <p>9 would take a phone call from me where I would ask him</p> <p>10 for a document or for to answer a question.</p> <p>11 Q. Did you ever sit next to him at the</p> <p>12 Treasury refunding meetings?</p> <p>13 A. Well, the meetings prior to October in</p> <p>14 3223, he would usually be sitting at the head of the</p> <p>15 table doing the chart show or assisting whoever was</p> <p>16 presenting the information.</p> <p>17 At the October 31 meeting, I was sitting</p> <p>18 in the front row and he came in with Undersecretary</p> <p>19 Fisher and there weren't enough seats for them to sit</p> <p>20 down and so I offered up a seat so Paul could have a</p> <p>21 seat.</p> <p>22 Q. Now, outside of the Treasury refunding</p> <p>23 conferences, what kind of information did Mr. Malvey</p> <p>24 give you?</p> <p>25 A. Usually it was historical information,</p> |

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| <p>1 like, hey, when was the last time Treasury managed<br/>2 its debt that way or -- or -- or, you know, when are<br/>3 you going to release a study on whatever they were<br/>4 doing a study on or -- or has there ever been a study<br/>5 on this or that sort of thing.<br/>6 Sometimes I would ask him questions<br/>7 like -- I mean there was a lot of interest in Wall<br/>8 Street for a year and a half starting in early 2000<br/>9 about the possible cessation of a 30-year bond. I<br/>10 knew he couldn't talk about that but I could ask him<br/>11 once in a while I do recall asking him like whether<br/>12 they were studying that possibility, things like<br/>13 that.<br/>14 Q. All right. So between 1994 and 2001, you<br/>15 spoke to Mr. Malvey both in person and by phone?<br/>16 A. Yes, on occasional basis. I'd see him<br/>17 most of those quarterly refunding meetings, and once<br/>18 in a while, I'd have a question at some other time.<br/>19 It wasn't a regular contact, but it was, you know,<br/>20 certainly three or four times a year at the meetings<br/>21 themselves and maybe a few other times by phone.<br/>22 Q. About how many times by phone?<br/>23 A. Geez. I don't know, maybe three or four<br/>24 times a year, I don't know.<br/>25 Q. Between '94 and 2000, about three or four</p> | <p>1 Exhibit 16, it says note the embargo time.<br/>2 Do you see that?<br/>3 A. Yes, I do.<br/>4 Q. Now, did you review with your employee<br/>5 what was meant by the embargo time?<br/>6 A. No, I just -- you know, there was going to<br/>7 be someone who was going to stand up and say what the<br/>8 embargo time was and I just wanted her to write it<br/>9 down. I didn't want her to exit the meeting without<br/>10 knowing -- without remembering the embargo time.<br/>11 Q. Did you give Allyson any instructions<br/>12 about what to say about the embargo to your customers<br/>13 when she called them?<br/>14 MS. WILLIAMS: Objection.<br/>15 THE WITNESS: Well, when she called them,<br/>16 she was as I say here in this exhibit, when you call<br/>17 them, tell them the embargo time, tell them to<br/>18 describe the securities and cite any remarks.<br/>19 BY MR. THEODOROU:<br/>20 Q. Right. You told her to note -- tell the<br/>21 clients what the embargo time was, correct?<br/>22 A. Correct.<br/>23 Q. Did you give her any instructions about<br/>24 informing the clients as to what embargo time meant?<br/>25 A. Certainly not. That didn't come up.</p> |
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| <p>1 times a year?<br/>2 A. Yeah, it's hard to say, it could have been<br/>3 five or six or it could have been one or two some<br/>4 years.<br/>5 Q. Outside of the quarterly refunding<br/>6 meetings, did you also have personal meetings with<br/>7 him outside of those meetings?<br/>8 A. Once in a while when I had clients who<br/>9 were interested in coming into to come talk to<br/>10 administration officials about the economy and the<br/>11 budget and so on, I would arrange meetings at<br/>12 Treasury and sometimes he would attend those.<br/>13 Q. About how many times was that?<br/>14 A. I don't recall the total number, there was<br/>15 a handful. There were certainly meetings that he<br/>16 attended, I think once in 2000 and once in 2001.<br/>17 Q. More than five?<br/>18 A. I don't -- I don't think so, but I just<br/>19 can't remember how many -- I mean the meetings are<br/>20 held with clients with officials in Washington were<br/>21 sort of irregular, sometimes they would have two or<br/>22 three meetings like that in a year and sometime they<br/>23 would just have one, it was just it sort of when it<br/>24 came together.<br/>25 Q. Now, if you turn further down to on</p>   | <p>1 Q. And did you give her any instructions as<br/>2 to what embargo meant?<br/>3 A. I did not.<br/>4 Q. Now, if you take a look at after where you<br/>5 note it says, excuse me, where it says note the<br/>6 embargo time you have another set of comments,<br/>7 immediately after you exit Treasury, call the<br/>8 following clients in order.<br/>9 Do you see that?<br/>10 A. Yes, I do.<br/>11 Q. When it says immediately after exiting<br/>12 Treasury, why did she have to leave Treasury in order<br/>13 to call the clients?<br/>14 A. Well, the call to Ward was certainly going<br/>15 to be -- well not certainly, I mean there was a<br/>16 possibility that she might be making it before -- the<br/>17 call before the embargo time.<br/>18 Now, in fact I -- I don't think she and<br/>19 Kristen got out of the building before the embargo<br/>20 time, I don't think any of the calls were made, at<br/>21 least that's what she reported to me at the time,<br/>22 before the embargo time.<br/>23 Q. Right, but why did you say to her<br/>24 immediately after exiting Treasury, call the<br/>25 following clients in order stating the embargo time</p>             |

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| <p>1 number 1, 2, describe the securities, 3, cite<br/>2 Treasury marks of interest.<br/>3 A. Right.<br/>4 Q. Why did you tell her do this after you<br/>5 exit Treasury?<br/>6 A. Because it was possible that she would be<br/>7 making these calls before the embargo time.<br/>8 Q. So what's the significance of telling them<br/>9 about the embargo time if she was going to make the<br/>10 calls after the embargo time?<br/>11 A. I didn't know whether she was going to be<br/>12 able to make the calls before or after the embargo<br/>13 time, I was hoping she would make the call to Ward<br/>14 before the embargo time so he could write his story<br/>15 and possibly get it out at the embargo time.<br/>16 Since the embargoes were generally only 10<br/>17 or 15 minutes, I didn't know whether she would be<br/>18 able to did that or not. She told me after the fact<br/>19 that she didn't -- wasn't able to make the call<br/>20 before the embargo time. But in case she could, she<br/>21 was in a situation where I didn't want -- I just<br/>22 wanted her to convey the embargo time, that's what I<br/>23 told her to do. She didn't necessarily know what<br/>24 that meant, but she would convey the embargo time.<br/>25 Q. And how long did Allyson work for you?</p> | <p>1 THE WITNESS: I didn't attend the January<br/>2 2000 or January 31st, 2001 meeting. At quarterly<br/>3 refunding meetings, sometimes the doors were closed,<br/>4 sometimes they were open, it just varied.<br/>5 At the October 31, 2001 meeting, I mean<br/>6 the doors were open but some of them were interior<br/>7 doors, not doors out to the hallway, but it's a big<br/>8 room, so my recollection is the doors were open.<br/>9 BY MR. THEODOROU:<br/>10 Q. What do you mean interior doors?<br/>11 A. There is a little passage way that<br/>12 connects some -- some of these rooms. It is sort of<br/>13 an interior hallway to the main hallway out, you<br/>14 know, the main outside hallway. So when you say<br/>15 doors, I mean there's interior doors as well as<br/>16 exterior doors.<br/>17 Q. Were the doors locked for the October<br/>18 conference?<br/>19 MS. WILLIAMS: Objection.<br/>20 THE WITNESS: No, I saw them open.<br/>21 MR. STANCIL: Can we take a short break<br/>22 for my sake, please?<br/>23 MR. THEODOROU: Sure.<br/>24 MS. WILLIAMS: Sure.<br/>25 THE VIDEOGRAPHER: Going off the record,</p>  |
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| <p>1 A. About two years. She started in early --<br/>2 in fact she started a week or two before this in<br/>3 early January of 2001. No, that's not -- hold on a<br/>4 second. I take it back. She started for me in early<br/>5 2000, that's right.<br/>6 Q. So by this time she had worked with you<br/>7 for about a year?<br/>8 A. For a year.<br/>9 Q. And you weren't sure that she knew what<br/>10 embargo time meant; is that correct?<br/>11 MS. WILLIAMS: Objection.<br/>12 THE WITNESS: I didn't have any -- I mean<br/>13 I didn't assume that she knew what embargo time was<br/>14 and I didn't tell her anything, I just said note the<br/>15 embargo time and conveyed that information.<br/>16 BY MR. THEODOROU:<br/>17 Q. At the refunding conferences such as the<br/>18 one in January of 2001 and October of 2001, were the<br/>19 doors left open or closed during the conferences?<br/>20 MS. WILLIAMS: Objection.<br/>21 MR. ROSSETTI: What was your time period?<br/>22 MR. THEODOROU: The refunding conferences,<br/>23 such as the January 2001 and the October 2001<br/>24 conference, were the doors left open or closed?<br/>25 MS. WILLIAMS: Objection.</p>   | <p>1 the time on the screen is 11:08:48.<br/>2 (Recess.)<br/>3 THE VIDEOGRAPHER: The time on the screen<br/>4 is 11:12:32, you're on the record.<br/>5 MR. STANCIL: Mr. Davis, before we go<br/>6 forward, could you clarify for us all what your<br/>7 recollection is with respect to the various doors<br/>8 that were in play in the October 31, 2001 refunding<br/>9 conference.<br/>10 THE WITNESS: Okay. The main entrance to<br/>11 the room and at the back of the room off the main<br/>12 hallway on the third floor of the Treasury was as I<br/>13 recall a double door and that was open and there were<br/>14 a lot of people that eventually came in, and I recall<br/>15 that door -- I recall people, you know, even coming<br/>16 and going through that door even during the meeting.<br/>17 I was -- my back was to it so I wasn't<br/>18 looking at it all the time, but I do recall that door<br/>19 being open when I looked back at, you know, before<br/>20 the meeting, once during the meeting and after the<br/>21 meeting when I turned around to leave, it was open.<br/>22 It's possible it was closed at some other point.<br/>23 At the head of the room where the Treasury<br/>24 officials enter the room, there's a doorway that's an<br/>25 interior doorway, it does not lead to the main</p> |

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| <p>1 hallway, the wall -- the other side of that wall is</p> <p>2 the main hallway. That door was initially closed, it</p> <p>3 was open when they came in and then it was closed</p> <p>4 again. And so, that's my recollection of the doors.</p> <p>5 BY MR. THEODOROU:</p> <p>6 Q. So the double door was open and that lead</p> <p>7 to the main hallway?</p> <p>8 A. Correct.</p> <p>9 Q. Was there any one stationed at the double</p> <p>10 door to prevent people from going in and out?</p> <p>11 A. I don't recall at the October 31 meeting,</p> <p>12 there were so many people it was difficult to tell.</p> <p>13 Now at other earlier meetings, sometimes</p> <p>14 there would be Treasury staff person standing at the</p> <p>15 door. It wasn't always the same person, people would</p> <p>16 walk in and out of these meetings without being</p> <p>17 challenged by that person. I assumed that the person</p> <p>18 sort of recognized people, I never saw that person</p> <p>19 bar entry to anybody. So it was not unusual at other</p> <p>20 quarterly refunding meetings to have a Treasury staff</p> <p>21 person standing at the door.</p> <p>22 Q. But October 31, you don't recall anybody</p> <p>23 being there?</p> <p>24 A. I don't recall anybody being there.</p> <p>25 Q. And in fact you saw people going in and</p> | <p>1 times a year, I would have clients in town and we'd</p> <p>2 go meet with various officials including Treasury</p> <p>3 officials. She may have attended one or two of those</p> <p>4 meetings. The meetings were usually set up with</p> <p>5 somebody else, but a lot of times they would bring in</p> <p>6 subordinates, including her and Malvey.</p> <p>7 Q. And Ousley knew you, right?</p> <p>8 A. She knew me, yeah, sure.</p> <p>9 (Davis Exhibit No. 38 was marked</p> <p>10 for identification.)</p> <p>11 MR. ROSSETTI: This is 38?</p> <p>12 MR. THEODOROU: Exhibit 38.</p> <p>13 MR. ROSSETTI: You could have picked the</p> <p>14 one that had the exhibit tab on it.</p> <p>15 BY MR. THEODOROU:</p> <p>16 Q. All right, Mr. Davis, directing your</p> <p>17 attention to Exhibit 38, do you recognize the</p> <p>18 document?</p> <p>19 A. Yes, this is an E-Mail that I received</p> <p>20 from John Youngdahl of Goldman Sachs on Thursday</p> <p>21 July 12th, 2001.</p> <p>22 Q. And in fact the E-Mail starts on the</p> <p>23 second page, a string of E-mails. Do you see that?</p> <p>24 A. Right, um, okay, yeah, that's right. On</p> <p>25 the next page, there's an E-Mail that preceded the</p>     |
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| <p>1 out?</p> <p>2 A. I saw people going in and out, before the</p> <p>3 meeting, during the meeting and after the meeting.</p> <p>4 Q. Turning to another subject, Jill Ousley,</p> <p>5 did you know her?</p> <p>6 A. Not well, but I'd met her on several</p> <p>7 occasions.</p> <p>8 Q. What kind of occasions?</p> <p>9 A. She was there at most of the, if not all</p> <p>10 the Treasury quarterly refunding meetings and once in</p> <p>11 a while when I had a question because I couldn't get</p> <p>12 through to Malvey to ask, I would call her.</p> <p>13 Q. Outside of the quarterly refunding</p> <p>14 meetings, how often would you have telephone calls</p> <p>15 with her?</p> <p>16 A. Once in a rare while, it was not frequent.</p> <p>17 Q. About how many calls did you have with her</p> <p>18 between '94 -- 1994 and 2001?</p> <p>19 A. Geez. I don't know, between half a dozen</p> <p>20 and a dozen maybe. I do in once in a rare while or</p> <p>21 once or twice a year, I would call her up if I</p> <p>22 couldn't get Malvey.</p> <p>23 Q. Did you have any meetings with her outside</p> <p>24 of the refunding conferences?</p> <p>25 A. Well, once in a while, one, two, three</p>  | <p>1 one on the first page and then there's my response to</p> <p>2 the E-Mail on the first page.</p> <p>3 Q. All right. I want you take a look at</p> <p>4 the E-Mail on the first page. Who was John</p> <p>5 Youngdahl?</p> <p>6 A. He was an economist at Goldman Sachs, he</p> <p>7 was in a group of economists that worked with the</p> <p>8 fixed income desk.</p> <p>9 Q. Okay. And when did you first meet or</p> <p>10 speak with him?</p> <p>11 A. Some time in 2001, you know, like I don't</p> <p>12 know, early 2001 some time, I'm not sure exactly</p> <p>13 when.</p> <p>14 Q. Did you meet with him or did you speak to</p> <p>15 him on the phone the first time you dealt with him?</p> <p>16 A. I met him over the phone first and then, I</p> <p>17 don't know, some time that spring or early summer, he</p> <p>18 dropped by my office when he was in Washington.</p> <p>19 Q. When you talked to him on the phone, did</p> <p>20 you call him or did he call you?</p> <p>21 A. I don't really recall. I mean I had a --</p> <p>22 I had established a relationship with his boss and I</p> <p>23 can't remember -- I probably called him, but I can't</p> <p>24 remember.</p> <p>25 Q. Who was his boss?</p> |

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| <p>1 A. I'm trying to remember the chief<br/>2 economist -- I can see him, but I can't, right now at<br/>3 this moment remember his name.<br/>4 Q. What would Mr. Youngdahl's duties at<br/>5 Goldman Sachs?<br/>6 A. I didn't know all of his duties, I just<br/>7 knew he was an economist working with the fixed<br/>8 income desk.<br/>9 Q. When you spoke to him on the phone, what<br/>10 was the substance of your conversation with him?<br/>11 A. The first time?<br/>12 Q. Yes?<br/>13 MS. WILLIAMS: Objection.<br/>14 THE WITNESS: Well, first of all, I don't<br/>15 really recall the phone conversation but I mean I<br/>16 must have introduced myself and told him what I do,<br/>17 following economic policy in Washington.<br/>18 BY MR. THEODOROU:<br/>19 Q. At some point, you started providing<br/>20 services to Goldman Sachs?<br/>21 A. Yes, right.<br/>22 Q. And was Mr. Youngdahl your contact at<br/>23 Goldman Sachs?<br/>24 A. He became my contact, he wasn't initially.<br/>25 Q. Who was your initial contact?</p>   | <p>1 Q. What was it?<br/>2 A. \$1500 a month.<br/>3 Q. Which was more than your agreement with<br/>4 MFS?<br/>5 A. Correct.<br/>6 Q. Do you remember placing a phone call to<br/>7 Mr. Youngdahl beginning in early May after refunding<br/>8 conference?<br/>9 A. Yes.<br/>10 Q. What happened?<br/>11 A. I called up and told him what was going to<br/>12 be announced at the refunding.<br/>13 Q. Was that the first time you had given that<br/>14 kind of information to Mr. Youngdahl?<br/>15 A. Yes.<br/>16 Q. And what kind of information did you give<br/>17 him?<br/>18 A. The embargo time, the amounts of 5, 10s<br/>19 and 30s and I don't recall what else.<br/>20 Q. What do you mean 5s, 10s, and 30s?<br/>21 A. At the quarterly refundings, the Treasury<br/>22 announces how much it is going to auction of 5-year<br/>23 notes, 10-year notes and 30-year bonds.<br/>24 Q. And you gave him information about 5-year<br/>25 notes, 10-year notes and 30-year bonds?</p>   |
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| <p>1 A. His boss and I'm trying -- I'll have to<br/>2 remember his name.<br/>3 Q. What services did you provide to Goldman<br/>4 Sachs?<br/>5 A. Same thing I provide to all my clients,<br/>6 E-Mail, faxing of information on an occasional basis<br/>7 and availability by phone to answer questions and do<br/>8 customized research.<br/>9 Q. And how long did you deal with<br/>10 Mr. Youngdahl's boss directly?<br/>11 A. For a short period before I started<br/>12 dealing with Mr. Youngdahl, I think also early in<br/>13 2001, although it could possibly have started -- no,<br/>14 it was 2001 because they became a paying client I<br/>15 think in May and so I was probably doing some<br/>16 preliminary dealings with them before then for a<br/>17 month or two before then. I think his boss came down<br/>18 and met me and had lunch with me at some point early<br/>19 in 2001.<br/>20 Q. Was the agreement with Goldman Sachs<br/>21 different from your agreement with MFS?<br/>22 A. I vaguely recollect that I had a written<br/>23 agreement with MFS.<br/>24 Q. Did you agree to a fee with Goldman Sachs?<br/>25 A. Yes.</p> | <p>1 A. Yes.<br/>2 Q. Specifically what kind of information?<br/>3 A. The amounts. How many billions of dollars<br/>4 of each were going to be auctioned.<br/>5 Q. Would be auctioned off?<br/>6 A. Right.<br/>7 Q. Did you tell Mr. Youngdahl that the<br/>8 information you were giving him was embargoed?<br/>9 A. Yes.<br/>10 Q. Did you provide that information to him<br/>11 before the embargo time was expiring?<br/>12 A. Yes.<br/>13 Q. Now, turning to Mr. Youngdahl's E-Mail of<br/>14 July 12th, 2001 which was Exhibit 38, the first page,<br/>15 you can see where he says, last quarter you called me<br/>16 on the morning of the Treasury refunding press<br/>17 conference to give me details from the<br/>18 briefing -- last quarter you called me on the morning<br/>19 of the Treasury refunding press conference to give me<br/>20 details from the briefing just before they hit the<br/>21 tape.<br/>22 Were you in the press room that morning<br/>23 other for the briefing or did you get the info from<br/>24 somewhere else? Is this something we can arrange as<br/>25 a routine matter.</p> |

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| <p>1 The next occasion will be August 1, a.m.;</p> <p>2 do you remember getting that?</p> <p>3 A. Yes.</p> <p>4 Q. And did you respond?</p> <p>5 A. Yes.</p> <p>6 Q. How did you respond?</p> <p>7 A. Oh, let's see. I responded with an E-Mail</p> <p>8 at the bottom of the next page here where I said to</p> <p>9 him I attend the quarterly briefings and can call a</p> <p>10 few minutes before with the understanding that</p> <p>11 everything is embargoed until the embargo time.</p> <p>12 Q. All right. Now, turning to the first</p> <p>13 E-Mail, the one I read to you a minute ago, first</p> <p>14 page.</p> <p>15 A. Right.</p> <p>16 Q. What time was that sent to you?</p> <p>17 A. Well, the time stamp on the E-Mail is 1:18</p> <p>18 on Thursday afternoon, July 12th.</p> <p>19 Q. All right. And that was from</p> <p>20 Mr. Youngdahl to you, correct?</p> <p>21 A. Correct.</p> <p>22 Q. And then you responded at what time?</p> <p>23 A. 2:16.</p> <p>24 Q. And in your E-Mail, you said I attend the</p> <p>25 quarterly meetings and a call a few minutes before</p> | <p>1 BY MR. THEODOROU:</p> <p>2 Q. And did you explain to him what embargoed</p> <p>3 meant?</p> <p>4 MS. WILLIAMS: Objection.</p> <p>5 THE WITNESS: No.</p> <p>6 MR. THEODOROU: All right.</p> <p>7 BY MR. THEODOROU:</p> <p>8 Q. But you specifically had a discussion with</p> <p>9 him as I will give you this information?</p> <p>10 A. Right. I mean, his main interest was the</p> <p>11 veracity of the information, you know, he -- he</p> <p>12 couldn't figure out how I was getting this. And so I</p> <p>13 told him I attend the meetings.</p> <p>14 Q. But followed up in that conversation by</p> <p>15 saying the information I'm giving you is embargoed</p> <p>16 until the embargo time, correct?</p> <p>17 A. Correct.</p> <p>18 MS. WILLIAMS: Objection.</p> <p>19 THE WITNESS: Correct, that's what I said</p> <p>20 to him.</p> <p>21 BY MR. THEODOROU:</p> <p>22 Q. Given that there's an objection, why don't</p> <p>23 you say again what you said to him?</p> <p>24 MS. WILLIAMS: Objection.</p> <p>25 THE WITNESS: I told John.</p>   |
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| <p>1 with the understanding that everything is embargoed</p> <p>2 until the embargo time, correct?</p> <p>3 A. Correct.</p> <p>4 Q. And Mr. Youngdahl, did he respond to your</p> <p>5 E-Mail?</p> <p>6 A. Yes, he did with the one just above on the</p> <p>7 second page there, 14 -- or at 2:22, he responded to</p> <p>8 me, we should chat about this just to be sure the</p> <p>9 ground rules are clear in advance.</p> <p>10 Q. And did you talk to him about the ground</p> <p>11 rules?</p> <p>12 A. I called him after that last E-Mail and we</p> <p>13 had a conversation.</p> <p>14 Q. What did you say in that conversation?</p> <p>15 MS. WILLIAMS: Objection.</p> <p>16 BY MR. THEODOROU:</p> <p>17 Q. Did you say anything to him in that</p> <p>18 conversation?</p> <p>19 A. Yes.</p> <p>20 Q. What did you say?</p> <p>21 MS. WILLIAMS: Objection.</p> <p>22 THE WITNESS: I said I attend the meetings</p> <p>23 and I can call you before the embargoed time if --</p> <p>24 with the understanding that everything's embargoed</p> <p>25 until the embargo time.</p>           | <p>1 BY MR. THEODOROU:</p> <p>2 Q. What did you say to him?</p> <p>3 MS. WILLIAMS: Objection.</p> <p>4 THE WITNESS: I told John Youngdahl over</p> <p>5 the phone on the afternoon of July 12th that I</p> <p>6 attended the quarterly refunding meetings and could</p> <p>7 call him before the embargoed time with the</p> <p>8 information from those meetings with the</p> <p>9 understanding that it was embargoed until the embargo</p> <p>10 time.</p> <p>11 BY MR. THEODOROU:</p> <p>12 Q. Now, you never had a discussion with my</p> <p>13 client about what embargo time meant, correct?</p> <p>14 A. Correct.</p> <p>15 MS. WILLIAMS: Objection.</p> <p>16 BY MR. THEODOROU:</p> <p>17 Q. And you never had a discussion similar to</p> <p>18 the discussion you had with Mr. Youngdahl with my</p> <p>19 client, Mr. Nothorn, correct?</p> <p>20 MS. WILLIAMS: Objection.</p> <p>21 THE WITNESS: That's right.</p> <p>22 BY MR. THEODOROU:</p> <p>23 Q. Now at the time you talked to</p> <p>24 Mr. Youngdahl, did you believe that discussion was</p> <p>25 consistent with the terms of your agreement with</p> |

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| <p>1 Mr. Anderson?</p> <p>2 A. No.</p> <p>3 Q. Now, you testified that you got rid of</p> <p>4 your agreement with Mr. Anderson, correct?</p> <p>5 A. Correct.</p> <p>6 Q. What did you do?</p> <p>7 A. In early August of 2001, after that</p> <p>8 quarterly refunding meeting, I came back to the</p> <p>9 office and when I was leaving for the day, I filed</p> <p>10 the quarterly refunding documents in my desk file</p> <p>11 drawer and noticed a blank file folder in the drawer</p> <p>12 next to the one I was filing in and I pulled it out</p> <p>13 and looked at it and there was the one page -- well,</p> <p>14 one page with both sides, the confidentiality</p> <p>15 agreement and I felt some remorse about what I was</p> <p>16 doing and so on my way to my car to go home for the</p> <p>17 evening, I pitched it in the trash.</p> <p>18 Q. Why did you feel remorse?</p> <p>19 A. Because I had violated the agreement.</p> <p>20 Q. Why did you get rid of the agreement even</p> <p>21 though you felt remorse?</p> <p>22 A. I just said to myself, I'm not going to do</p> <p>23 this any more and I'm going to get rid of this and</p> <p>24 forget about it.</p> <p>25 Q. You're not going to do what any more,</p> | <p>1 BY MR. THEODOROU:</p> <p>2 Q. Mr. Davis, would you please look at</p> <p>3 Exhibit 30. Do you have the exhibit in front of you?</p> <p>4 A. Yes.</p> <p>5 Q. This is the E-Mail that you sent to your</p> <p>6 lawyers on or about November 5th, 2001?</p> <p>7 A. Yes.</p> <p>8 Q. Do you remember this?</p> <p>9 A. Yes.</p> <p>10 Q. And you were asked several questions</p> <p>11 yesterday?</p> <p>12 A. Yes.</p> <p>13 Q. And one of the questions was whether or</p> <p>14 not you had a present recollection of the substance</p> <p>15 of these E-mails?</p> <p>16 A. Right.</p> <p>17 Q. Remember that you said that you didn't.</p> <p>18 MS. WILLIAMS: Objection.</p> <p>19 BY MR. THEODOROU:</p> <p>20 Q. Did I properly characterize what you said</p> <p>21 or -- let me rephrase that.</p> <p>22 You were shown this document yesterday,</p> <p>23 correct?</p> <p>24 A. Correct.</p> <p>25 Q. And this was the E-Mail to your lawyers.</p> |
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| <p>1 breach the agreement?</p> <p>2 A. Right.</p> <p>3 Q. So why didn't you keep the agreement?</p> <p>4 A. I don't know, I -- I just -- I just -- I</p> <p>5 had already breached it and so, you know, I just</p> <p>6 wanted to get it out of my sight.</p> <p>7 Q. It was your understanding that Treasury</p> <p>8 had the original agreement, correct?</p> <p>9 A. Correct.</p> <p>10 Q. If we wanted to get that agreement, where</p> <p>11 could we get that agreement from?</p> <p>12 MS. WILLIAMS: Objection.</p> <p>13 MR. STANCIL: If you know.</p> <p>14 BY MR. THEODOROU:</p> <p>15 Q. If you know.</p> <p>16 A. The last time I saw the original it was</p> <p>17 sitting in front of Roger Anderson, what happened to</p> <p>18 it after that, I have no idea.</p> <p>19 MR. THEODOROU: Can we go off the record</p> <p>20 for a second?</p> <p>21 THE VIDEOGRAPHER: Going off the record,</p> <p>22 time on the screen is 11:33:53.</p> <p>23 (Recess.)</p> <p>24 THE VIDEOGRAPHER: The time on the screen</p> <p>25 is 11:52:42, you're on the record.</p>  | <p>1 A. Right.</p> <p>2 Q. And you were asked about whether events</p> <p>3 were fresh in your mind at the time when you wrote</p> <p>4 this, correct?</p> <p>5 A. Yeah, right.</p> <p>6 Q. All right. Now, I want to direct your</p> <p>7 attention to the notation of 9:53 a.m.</p> <p>8 Do you see that --</p> <p>9 A. Yes.</p> <p>10 Q. -- on page 2 of this E-mail?</p> <p>11 A. Um-hum.</p> <p>12 Q. And it says, didn't get through again to</p> <p>13 Dean Maki?</p> <p>14 A. Right.</p> <p>15 Q. Putnam Investments.</p> <p>16 A. Um-hum.</p> <p>17 Q. No clear recollection, but I don't think I</p> <p>18 left a message?</p> <p>19 A. Right.</p> <p>20 Q. Correct?</p> <p>21 A. Right.</p> <p>22 MR. THEODOROU: Now, I'd like a document</p> <p>23 marked for identification, which will be the next</p> <p>24 sequence number.</p> <p>25 (Davis Exhibit No. 39 was marked</p>  |

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|--|---|
| <p>1 for identification.)</p> <p>2 BY MR. THEODOROU:</p> <p>3 Q. There's another notation 9:45 a.m., didn't</p> <p>4 get through to Dean Maki, Putnam Investments, he's</p> <p>5 not a client but I hoped he'd become one; do you see</p> <p>6 that?</p> <p>7 A. Yes.</p> <p>8 Q. There appears to be two notations relating</p> <p>9 to Putnam, 9:45 and 9:53?</p> <p>10 A. Right.</p> <p>11 Q. Now, I'd like you to take a look at the</p> <p>12 exhibit in front of you, Exhibit Number 39. Exhibit</p> <p>13 Number 39. Why don't you take some time and just</p> <p>14 read through it. It's only a couple of paragraphs.</p> <p>15 You notice this is a letter to Andrew B.</p> <p>16 Sporkin, branch chief, Securities and Exchange</p> <p>17 Commission?</p> <p>18 A. Yes.</p> <p>19 Q. And it's from Putnam Investments, do you</p> <p>20 see that?</p> <p>21 A. Yes.</p> <p>22 Q. Right now, directing your attention to the</p> <p>23 second paragraph of the exhibit, you see where it</p> <p>24 says in this letter and this is a letter from Andrew</p> <p>25 Hachey of Putnam Investments to Mr. Sporkin.</p>   | <p>1 THE WITNESS: I agree, this was written on</p> <p>2 November 5th, that was five days later. I made a lot</p> <p>3 of calls one after the other.</p> <p>4 BY MR. THEODOROU:</p> <p>5 Q. Right.</p> <p>6 A. And five days later. You're recalling</p> <p>7 exactly what I said, because things blurred together.</p> <p>8 One thought that does occur to me, sometimes when I</p> <p>9 didn't get through to people I got a machine.</p> <p>10 Q. Correct.</p> <p>11 A. Obviously from my E-Mail I didn't even</p> <p>12 remember that I got a person in that case.</p> <p>13 Q. And in fact, turn to the second page of</p> <p>14 that exhibit that I just gave you. It says, Mr. Maki</p> <p>15 returned to his office at or shortly after 10:00 a.m.</p> <p>16 Mr. Maki remembers that the message his assistant had</p> <p>17 taken for him while he was away was from Mr. Davis</p> <p>18 and that the message read simply no more 30-year</p> <p>19 Treasury bonds. Mr. Maki did not return Mr. Davis's</p> <p>20 call.</p> <p>21 Now, if you look at Exhibit 30, 9:53 a.m.,</p> <p>22 didn't get through again to Dean Maki, no clear</p> <p>23 recollection, but I don't think I left message?</p> <p>24 Do you see that?</p> <p>25 Does reading this paragraph refresh your</p>                      |
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| <p>1 A. Um-hum.</p> <p>2 Q. You see what it says in the letter is</p> <p>3 shortly before 10:00 a.m. on the morning of October</p> <p>4 31st, Mr. Maki's administrative assistant answered</p> <p>5 Mr. Maki's telephone line at Putnam.</p> <p>6 Mr. Maki was not in his office at the time</p> <p>7 of the call. Mr. Maki's assistant does not remember</p> <p>8 the name of the person who called, but she remembers</p> <p>9 that the person told her to leave a particular</p> <p>10 message for Mr. Maki and told her in words or</p> <p>11 substance that the message was very time sensitive.</p> <p>12 Mr. Maki's assistant does not remember the</p> <p>13 content of the message. And he asked me to ask</p> <p>14 Mr. Maki's assistant whether the caller used the term</p> <p>15 embargoed or confidential. Mr. Maki's assistant does</p> <p>16 not remember the caller using those similar words</p> <p>17 during the call.</p> <p>18 Does that refresh your recollection any</p> <p>19 further as to the first call you made?</p> <p>20 A. No.</p> <p>21 Q. But when you wrote this E-Mail, it's fair</p> <p>22 to say that when you wrote the E-Mail to your</p> <p>23 attorneys, though, you may not have been as clear in</p> <p>24 your recollection at that time?</p> <p>25 MS. WILLIAMS: Objection.</p> | <p>1 recollection any more about what you did with</p> <p>2 Mr. Maki?</p> <p>3 A. Like I say right now today I don't even</p> <p>4 recall that I talked to a person there and so, you</p> <p>5 know, what I said in this memo on November 5th, and</p> <p>6 my recollection then doesn't mention that I talked to</p> <p>7 a person there so --</p> <p>8 Q. But given what you just read in</p> <p>9 Exhibit 39, it's fair to say when you wrote this memo</p> <p>10 to your attorneys given the constant movement of</p> <p>11 events after the bond rally and the publicity</p> <p>12 regarding what happened with the information being</p> <p>13 disclosed that you may not have been entirely</p> <p>14 accurate with what you were giving the attorneys?</p> <p>15 MS. WILLIAMS: Objection.</p> <p>16 THE WITNESS: There's an obvious</p> <p>17 discrepancy between what I wrote on November 5th and</p> <p>18 what this person at Putnam wrote Mr. Sporkin. All I</p> <p>19 can say is that I had -- the recollections that I had</p> <p>20 when I wrote E-Mail and I have my recollections now,</p> <p>21 that's it.</p> <p>22 BY MR. THEODOROU:</p> <p>23 Q. Right. All right. Yesterday you</p> <p>24 testified that you did not meet with the SEC</p> <p>25 attorneys before today's deposition?</p> |

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| <p>1 A. Well, I mean four-and-a-half years ago I<br/>2 met with some.<br/>3 Q. Right. Let me just clarify that.<br/>4 Did you meet with the SEC attorneys who<br/>5 were here today representing the Securities and<br/>6 Exchange Commission in this case before today's<br/>7 deposition?<br/>8 A. Four-and-a-half years ago.<br/>9 Q. Mr. Rossetti?<br/>10 A. Mr. Rossetti was there.<br/>11 Q. But did you meet with them recently?<br/>12 A. No.<br/>13 Q. Now, four-and-a-half-years ago, you did<br/>14 meet with the SEC attorneys?<br/>15 A. Actually it was the year -- I forget<br/>16 exactly when that was, some time in 2002 I met with<br/>17 the SEC.<br/>18 Q. Was this when you testified at the SEC?<br/>19 MR. STANCIL: To the best of your<br/>20 recollection.<br/>21 THE WITNESS: Yeah.<br/>22 BY MR. THEODOROU:<br/>23 Q. Now, subsequent to that when you<br/>24 testified, before the SEC, you then entered into a<br/>25 plea agreement with the United States and you settled</p>  | <p>1 A. There were two.<br/>2 Q. There were two of them?<br/>3 Yes. Brian Coad and I forget the other<br/>4 guy's name.<br/>5 Q. Brian Coad or Rob Hoates?<br/>6 A. Rob Hoates.<br/>7 Q. Was there also an investigator there?<br/>8 A. Yeah, there was an investigator. Well --<br/>9 yeah, there was, because he gave me his card.<br/>10 Q. And the investigator's from the FBI?<br/>11 A. I don't recall, it could have been the<br/>12 Postal Service, it could have been the FBI.<br/>13 Q. Was there more than one agent there?<br/>14 A. I don't recall.<br/>15 Q. How many times did they debrief you before<br/>16 your plea?<br/>17 A. I don't recall. I mean I -- I recall -- I<br/>18 think I went up there twice before the trial, but I<br/>19 couldn't swear to it, that's a long time ago.<br/>20 Q. Okay. And how long were you in the<br/>21 meetings?<br/>22 A. Well, several hours, I mean like two or<br/>23 three as I recall.<br/>24 (Interruption by a telephone call.)<br/>25 MR. THEODOROU: Off the record.</p>                                     |
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| <p>1 a case with the SEC, correct?<br/>2 A. Correct.<br/>3 Q. Now before you entered into the plea<br/>4 agreement with the United States, did you meet with<br/>5 the U.S. Attorney's Office?<br/>6 A. I don't recall what order or what sequence<br/>7 of events. There were times I was deposed here at<br/>8 the SEC, there were other times I was up in New York<br/>9 with the U.S. Attorney and I don't recall what the<br/>10 order was or when.<br/>11 Q. Do you recall meeting with the prosecutors<br/>12 in New York, Mr. Hoates and Mr. Coad?<br/>13 A. Yes, I do recall going up there I think on<br/>14 two occasions.<br/>15 Q. And did you discuss the case with them and<br/>16 give them information?<br/>17 A. They integrated me and yeah, I --<br/>18 Q. Was anybody from the SEC present at the<br/>19 interview?<br/>20 A. Up in New York?<br/>21 Q. Yes. When you met with Mr. Hoates?<br/>22 A. No, at least not that I recall.<br/>23 Q. Besides the pros -- how many prosecutors<br/>24 were there, how many lawyers from the U.S. Attorney's<br/>25 Office was there?</p> | <p>1 THE VIDEOGRAPHER: Going off the record<br/>2 time on the screen is 12:04:17.<br/>3 (Discussion off the record.)<br/>4 THE VIDEOGRAPHER: Time on the screen is<br/>5 12:05:54, you're on the record.<br/>6 BY MR. THEODOROU:<br/>7 Q. I think I asked when I left how long was<br/>8 the debriefing?<br/>9 A. I think they were like two or three hours<br/>10 each.<br/>11 Q. And during those meetings, did you tell<br/>12 the U.S. Attorney's Office about the agreement with<br/>13 the Treasury Department?<br/>14 A. Hmm, yeah, I did.<br/>15 Q. What else did you talk about with the<br/>16 U.S. Attorney's Office?<br/>17 A. Everything, the whole case, I mean from<br/>18 start to finish.<br/>19 Q. The substance of what we've talked about<br/>20 the last couple of days?<br/>21 A. Yeah, yeah. The nature of my business and<br/>22 minute by minute through the phone records and<br/>23 through call by call and all -- at least that's my<br/>24 recollection, it was a fairly detailed thing.<br/>25 Q. Now, before you settled with the SEC, did</p> |

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|--|---|
| <p>1 you meet with the SEC attorneys?</p> <p>2 A. Yes.</p> <p>3 Q. And were you debriefed by the SEC</p> <p>4 attorneys?</p> <p>5 A. I was interrogated quite in detail, yeah.</p> <p>6 Q. Where was that?</p> <p>7 A. It was at the SEC office at the previous</p> <p>8 location which I don't even know where --</p> <p>9 Q. Who was present for the SEC for those</p> <p>10 meetings?</p> <p>11 A. I remember Mr. Rossetti was there, other</p> <p>12 than that, I don't really recall.</p> <p>13 Q. Besides Mr. Rossetti, do you recall</p> <p>14 anybody else being there?</p> <p>15 A. There were several other people.</p> <p>16 Q. Was Mr. Sporkin there?</p> <p>17 A. I think so.</p> <p>18 Q. Do you remember anybody else?</p> <p>19 A. There was a postal inspector or somebody</p> <p>20 like that, some investigator.</p> <p>21 Q. How many times did you meet with them?</p> <p>22 A. You know, I don't really recall. It might</p> <p>23 have been once, it height have been twice, I just</p> <p>24 don't recall.</p> <p>25 Q. Did you talk to them about your agreement</p>  | <p>1 Q. Do you recall whether they asked you about</p> <p>2 whether you communicated the terms of your agreement</p> <p>3 with Treasury to Mr. Nothern?</p> <p>4 A. I don't -- I mean, I don't recall that.</p> <p>5 The one -- the one thing I do recall is stating that</p> <p>6 I was unsure on whether I'd left the embargo time on</p> <p>7 the message that I left on Mr. Nothern's voicemail,</p> <p>8 that's one thing I do remember, I was just unsure</p> <p>9 whether I'd left that.</p> <p>10 Q. Did they ever ask whether you told</p> <p>11 Mr. Nothern what embargo means?</p> <p>12 A. I just don't recall.</p> <p>13 Q. Do you recall whether they asked whether</p> <p>14 you ever told Mr. Nothern what embargoed time means?</p> <p>15 MS. WILLIAMS: Objection.</p> <p>16 THE WITNESS: I just don't recall any of</p> <p>17 that.</p> <p>18 BY MR. THEODOROU:</p> <p>19 Q. When you met with the U.S. Attorney's</p> <p>20 Office, what did they ask you about Mr. Nothern?</p> <p>21 A. I -- I just don't have any recollection of</p> <p>22 that. I think I -- I mean I do -- I'm sure I</p> <p>23 repeated the same uncertainty about whether I left</p> <p>24 the embargoed time, you know, but that's the only</p> <p>25 thing I recall.</p> |
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| <p>1 with Mr. Anderson at the meetings with the SEC</p> <p>2 attorneys?</p> <p>3 A. Yes.</p> <p>4 Q. Did they ever show you the Treasury</p> <p>5 Department's copy of your agreement?</p> <p>6 A. No.</p> <p>7 Q. What did the SEC attorneys focus on in</p> <p>8 their meeting with you?</p> <p>9 A. Everything, they went through great</p> <p>10 detail, the nature of my business and a lot of time</p> <p>11 spent on the form of my business. They couldn't</p> <p>12 understand why I wasn't a C corporation or an L.L.P.,</p> <p>13 I kept saying I'm a sole prop, I'm a sole prop, I</p> <p>14 know what that means, I used to work on the Joint Tax</p> <p>15 Committee, I'm a sole prop.</p> <p>16 We spent a lot of time on that and then we</p> <p>17 went through the procedures at Treasury and the</p> <p>18 agreement, my recollection of the agreement, a lot of</p> <p>19 time on that and then a lot of questions on, you</p> <p>20 know, the meeting on the 31st and E-Mail traffic, you</p> <p>21 know, the E-mail with Mr. Youngdahl and, you know,</p> <p>22 the phone calls on October 31st.</p> <p>23 Q. What did they ask about Mr. Nothern?</p> <p>24 A. Whew, I don't recall. It was mostly</p> <p>25 focused on Mr. Youngdahl is my recollection.</p> | <p>1 MR. THEODOROU: Can we go off the record.</p> <p>2 THE VIDEOGRAPHER: Going off the record.</p> <p>3 The time on the screen is 12:12 p.m.</p> <p>4 (Discussion off the record.)</p> <p>5 THE VIDEOGRAPHER: Time on the screen is</p> <p>6 12:18:42, you're on the record.</p> <p>7 MR. THEODOROU: I do not have any</p> <p>8 questions -- further questions for Mr. Davis at this</p> <p>9 time.</p> <p>10 Thank you, Mr. Davis.</p> <p>11 MS. WILLIAMS: I have some follow-up</p> <p>12 questions for Mr. Davis.</p> <p>13 EXAMINATION BY COUNSEL FOR PLAINTIFF</p> <p>14 BY MS. WILLIAMS:</p> <p>15 Q. Mr. Davis, can I ask you to pull back out</p> <p>16 what's been marked as Exhibit 30. This is an E-Mail</p> <p>17 you drafted for your attorneys, dated November 5th,</p> <p>18 2001, correct?</p> <p>19 A. Correct.</p> <p>20 Q. You tried to make the information in this</p> <p>21 E-Mail as accurate as possible?</p> <p>22 MR. THEODOROU: Objection.</p> <p>23 BY MS. WILLIAMS:</p> <p>24 Q. Is that a fair statement?</p> <p>25 A. That's what I wrote to the best of my</p>  |

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| <p style="text-align: right;">Page 337</p> <p>1 recollection on November 5th.</p> <p>2 Q. Is it fair to say that your recollection</p> <p>3 of the events that are described in this E-Mail were</p> <p>4 more fresh on November 5th than they are today?</p> <p>5 MR. THEODOROU: Objection.</p> <p>6 THE WITNESS: I guess. I mean memory does</p> <p>7 deteriorate with time usually.</p> <p>8 BY MS. WILLIAMS:</p> <p>9 Q. So you think that you remembered the</p> <p>10 information in here -- that had you a better</p> <p>11 recollection on November 5th of the events of</p> <p>12 October 31st than you have today five years later?</p> <p>13 MR. THEODOROU: Objection.</p> <p>14 THE WITNESS: Yes.</p> <p>15 BY MS. WILLIAMS:</p> <p>16 Q. Can I ask you to turn to the second page</p> <p>17 of the exhibit?</p> <p>18 A. Okay.</p> <p>19 Q. Do you see at 9:53, Mr. Theodorou asked</p> <p>20 you a few questions about the entry at 9:53?</p> <p>21 A. Correct.</p> <p>22 Q. Do you see that entry?</p> <p>23 A. Yeah, I do see it.</p> <p>24 Q. And the second line there, do you see the</p> <p>25 phrase no clear recollection?</p> | <p style="text-align: right;">Page 339</p> <p>1 A. Yes.</p> <p>2 Q. Do you see the words no clear recollection</p> <p>3 written in that description?</p> <p>4 MR. THEODOROU: Objection.</p> <p>5 THE WITNESS: It's not there.</p> <p>6 BY MS. WILLIAMS:</p> <p>7 Q. Do you agree you did your best to record</p> <p>8 your recollection accurately in this document?</p> <p>9 MR. THEODOROU: Objection.</p> <p>10 THE WITNESS: I did my best to put down my</p> <p>11 recollections at that time.</p> <p>12 BY MS. WILLIAMS:</p> <p>13 Q. I wanted to ask you a couple of questions</p> <p>14 about the quarterly refunding conferences. You</p> <p>15 stated that over the years you attended a number of</p> <p>16 quarterly refunding conferences; is that right?</p> <p>17 A. Correct.</p> <p>18 Q. Did you always know every one who was in</p> <p>19 attendance at the conferences?</p> <p>20 A. No.</p> <p>21 Q. So there may have been people there at the</p> <p>22 conferences that you did not know?</p> <p>23 A. Correct.</p> <p>24 Q. And people that you did not know where</p> <p>25 those people worked; is that right?</p>                          |
| <p style="text-align: right;">Page 338</p> <p>1 A. Correct.</p> <p>2 Q. If I could point you to 9:49.</p> <p>3 A. Um-hum.</p> <p>4 Q. Do you see that?</p> <p>5 A. Yes, no clear recollection.</p> <p>6 Q. Do you see the words no clear recollection</p> <p>7 starting on the end of the first line and going to</p> <p>8 the second line?</p> <p>9 A. Um-hum.</p> <p>10 Q. So is it fair to say that when you drafted</p> <p>11 this document, when you didn't have a clear</p> <p>12 recollection, you noted it on the document at least</p> <p>13 in these two places?</p> <p>14 MR. THEODOROU: Objection.</p> <p>15 THE WITNESS: When I wrote I had no clear</p> <p>16 recollection that meant that I just didn't remember.</p> <p>17 Other entries I remembered some things, but not</p> <p>18 necessarily all the things so there are gradations of</p> <p>19 recollection.</p> <p>20 BY MS. WILLIAMS:</p> <p>21 Q. Can I point you to the top of that second</p> <p>22 page 9:38?</p> <p>23 A. Yes, yes.</p> <p>24 Q. This is a description of a call to</p> <p>25 Mr. Nothem?</p>   | <p style="text-align: right;">Page 340</p> <p>1 A. Correct.</p> <p>2 Q. And I think you also said that there were</p> <p>3 a number of people at the October 31st conference</p> <p>4 more than usually attended the conference --</p> <p>5 A. Correct.</p> <p>6 Q. -- is that right?</p> <p>7 So did you know all of the people who were</p> <p>8 in attendance at that conference?</p> <p>9 A. No.</p> <p>10 Q. Do you know where the people who attended</p> <p>11 that conference where they worked, or who they worked</p> <p>12 for?</p> <p>13 A. No. Some of them I did, but many of them</p> <p>14 I did not.</p> <p>15 Q. You described the layout of the room for</p> <p>16 the October 31st conference. And I wanted to ask</p> <p>17 you, you said that there were double doors in the</p> <p>18 room?</p> <p>19 A. I thought so or large -- yeah, double -- I</p> <p>20 thought there were double doors, maybe it was a large</p> <p>21 door, it was a large opening.</p> <p>22 Q. When you say double doors, can you</p> <p>23 describe to me what you mean exactly?</p> <p>24 A. That there are two doors and that they</p> <p>25 open in or out.</p> |

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|---|--|
| <p>1 Q. Do you mean two doors right next to each<br/>2 other?</p> <p>3 A. Right.</p> <p>4 Q. You said that at some point you saw people<br/>5 going in and out of those doors?</p> <p>6 A. Right.</p> <p>7 Q. Could you tell me at what points during<br/>8 the conference you noticed people going in and out of<br/>9 the doors?</p> <p>10 A. Well, doors were open when -- before the<br/>11 meeting and right up until the meeting started, I<br/>12 wasn't paying attention back there and you know later<br/>13 on I -- during the meeting I noticed there were some<br/>14 people going in and out and at the end of the<br/>15 meeting, you know they were open.</p> <p>16 Q. Do you recall whether Mr. Fisher had made<br/>17 his statements when you recalled people going in and<br/>18 out?</p> <p>19 MR. THEODOROU: Objection.</p> <p>20 THE WITNESS: I was paying attention to<br/>21 Mr. Fisher. When I noticed people going in and out<br/>22 during the meeting, it was during the question and<br/>23 answer period.</p> <p>24 BY MS. WILLIAMS:</p> <p>25 Q. Do you know who the people were who were</p>   | <p>1 because they came in from the back doors, not from<br/>2 the front and because they sat down, you know, in the<br/>3 theater seating just like all the rest of the press<br/>4 that I did know.</p> <p>5 There were also some Treasury staff back<br/>6 there, kind of organizing the meeting and there were<br/>7 other Treasury staff that came with Fisher from the<br/>8 interior entryway. And so I assumed most of those<br/>9 people coming in and out were Press, but there were<br/>10 also some Treasury staff back there, and so I knew<br/>11 some of the Treasury staff but there were others that<br/>12 I may not have known and so I could not be sure who<br/>13 was staff and who was Press.</p> <p>14 Q. When Mr. Theodorou was asking you<br/>15 questions this morning, you mentioned that on<br/>16 occasion, you would see -- maybe after refunding<br/>17 conferences in general, and I want you to clear that<br/>18 up for me, you would see reporters leave the room and<br/>19 make phone calls?</p> <p>20 A. Correct.</p> <p>21 Q. Was that after all of the quarterly<br/>22 refunding conferences that you attended?</p> <p>23 A. Yeah, pretty regularly. I mean there were<br/>24 a few quarterly refundings where there were only two<br/>25 or three reporters and me and those were the</p>                                |
| Page 342  | Page 344   |
| <p>1 going in and out, can you identify any of the people?</p> <p>2 A. No, I can't.</p> <p>3 Q. Do you know -- could you -- do you know if<br/>4 the people going in and out of the door were part of<br/>5 the Press?</p> <p>6 A. No, not for sure, I mean I assumed they<br/>7 were, but I had no idea who they were. There were a<br/>8 lot of additional Press there than you would normally<br/>9 have, there were television crews, there were extra<br/>10 Treasury officials than normal, it was just a lot<br/>11 additional people at that meeting.</p> <p>12 Q. Why do you believe there were a lot of<br/>13 additional people at that meeting?</p> <p>14 MR. THEODOROU: Objection.</p> <p>15 THE WITNESS: It was Fisher's first<br/>16 statement as Undersecretary and it had been announced<br/>17 in advance and so it attracted a lot more media<br/>18 attention.</p> <p>19 BY MS. WILLIAMS:</p> <p>20 Q. The additional people at the meeting, do<br/>21 you know if they were part of the Press?</p> <p>22 MR. THEODOROU: Objection.</p> <p>23 THE WITNESS: I mean I'd recognize certain<br/>24 members of the press there. There were a lot of<br/>25 additional people there that I assumed were Press</p> | <p>1 reporters who had offices down the first floor of the<br/>2 Treasury. Nobody went out in the hallway and pulled<br/>3 out their cell phone for that meeting, but most of<br/>4 the meetings where there were more reporters, there<br/>5 were some reporters who did not have space down in<br/>6 the Treasury Press room and so after most quarterly<br/>7 refunding meetings, the reporters who did not have<br/>8 space down at the Treasury press room would go out in<br/>9 the hallway and immediately as soon as the meeting<br/>10 was over and before the embargo time be on their cell<br/>11 phones.</p> <p>12 Q. You saw these reporters inside the<br/>13 Treasury building making telephone calls on --</p> <p>14 A. Yes, I did.</p> <p>15 Q. Did you ever see any reporters inside the<br/>16 press office making phone calls?</p> <p>17 MR. THEODOROU: Objection.</p> <p>18 THE WITNESS: On my way out of the<br/>19 building, I could look into that room if the door was<br/>20 open and sometimes I saw somebody with a phone in<br/>21 their hand, but I mean that was an occasional<br/>22 occurrence, it's not like -- I mean the meeting would<br/>23 break up and people would kind of leave generally at<br/>24 that time and go down the elevator or down the stairs<br/>25 and down that hallway and sometimes I would see the</p> |

24 (Pages 341 to 344)

Alderson Reporting Company  
1-800-FOR-DEPO

1111 14th Street, NW Suite 400

Washington, DC 20005

Peter Davis, Jr.

April 20, 2006

Washington, DC

|  |   |
|--|---|
| <p style="text-align: right;">Page 345</p> <p>1 reporters who had space in that Treasury press room<br/> 2 go into that room and pick up a phone.<br/> 3 BY MS. WILLIAMS:<br/> 4 Q. Do you know who the reporters were<br/> 5 calling?<br/> 6 A. No, I have no way of knowing. I assume<br/> 7 they were calling their editors and their papers, but<br/> 8 I have no way of knowing who they were calling.<br/> 9 Q. You didn't know who was on the other end<br/> 10 of the call?<br/> 11 A. No, there was no way for me to know that.<br/> 12 By the way, I just remembered the name of<br/> 13 the reporter who is the one reporter I can name who<br/> 14 is at almost all of these meetings, it was Ed Keane,<br/> 15 K-e-a-n-e. He was with Bloomberg then, he's with the<br/> 16 G-7 group now. He and I would often sit next to each<br/> 17 other.<br/> 18 Q. At the -- where would you sit next to each<br/> 19 other?<br/> 20 A. At quarterly refunding conferences. When<br/> 21 he was there, he would often show up after I had<br/> 22 arrived and he would often sit next to me because we<br/> 23 knew each other.<br/> 24 Q. I want to ask you a little bit about your<br/> 25 agreement with Mr. Anderson.</p> | <p style="text-align: right;">Page 347</p> <p>1 honor the embargo?<br/> 2 MR. THEODOROU: Objection.<br/> 3 THE WITNESS: There was no such language<br/> 4 in the agreement.<br/> 5 BY MS. WILLIAMS:<br/> 6 Q. Did you ask Mr. Anderson any questions<br/> 7 about the agreement before you signed the agreement?<br/> 8 A. I asked him for a minute or two to read<br/> 9 it, but I didn't have time to give it a detailed<br/> 10 reading, I gave it a cursory reading for a minute or<br/> 11 two, no, I didn't ask any other questions.<br/> 12 Q. When you say you didn't have the time,<br/> 13 what do you mean?<br/> 14 A. Assistant Secretary of Treasury, he's a<br/> 15 busy guy, I didn't feel it was appropriate to take a<br/> 16 lot of his time. He was sitting there and after a<br/> 17 minute or two I decided it was time to sign it.<br/> 18 Q. Did you believe that you understood the<br/> 19 terms of the agreement before you signed it?<br/> 20 A. I understood that I should not disclose<br/> 21 the information before it was made available to the<br/> 22 public. I didn't understand every detail of what was<br/> 23 on those two pages. I didn't recognize the U.S. Code<br/> 24 sections at the end of it and I -- no, I thought I<br/> 25 had a general understanding of it, I didn't have a</p> |
| <p style="text-align: right;">Page 346</p> <p>1 One follow-up question before I ask you<br/> 2 about your agreement with Mr. Anderson. You talked<br/> 3 about noticing reporters inside of Treasury making<br/> 4 telephone calls after the quarterly refunding<br/> 5 conferences.<br/> 6 A. Right.<br/> 7 Q. Did you ever see any reporters outside<br/> 8 making any telephone calls?<br/> 9 A. No.<br/> 10 Q. Now, to the agreement that you had with<br/> 11 Mr. Anderson, I just had a couple of questions about<br/> 12 that. You stated that you knew about the agreement<br/> 13 and Mr. Anderson knew about the agreement.<br/> 14 Am I also correct that there was an<br/> 15 assistant to Mr. Anderson, the assistant to<br/> 16 Mr. Anderson also knew about this agreement; is that<br/> 17 correct?<br/> 18 A. Correct. There were three of us in that<br/> 19 room when that agreement was signed.<br/> 20 Q. And do you recall if that assistant was<br/> 21 male or female?<br/> 22 A. It was female. She was female.<br/> 23 Q. Do you recall if the agreement had any<br/> 24 language in it that allowed you to tell other people<br/> 25 about embargoed information if those people agreed to</p>          | <p style="text-align: right;">Page 348</p> <p>1 specific detailed understanding of it.<br/> 2 Q. You said that you understood that you were<br/> 3 not to convey the information before the embargo<br/> 4 time.<br/> 5 A. Correct.<br/> 6 Q. Are you referring to information you<br/> 7 received at Treasury's quarterly refunding<br/> 8 conferences?<br/> 9 MR. THEODOROU: Objection.<br/> 10 THE WITNESS: Yes. I took the agreement<br/> 11 to be specifically to Treasury quarterly refunding<br/> 12 meetings. I had numerous other meetings at Treasury<br/> 13 on a regular basis, with this professional group of<br/> 14 mine and when clients came in to talk about the<br/> 15 economy and deficits and tax cuts so that agreement<br/> 16 as I understood it was only about Treasury quarterly<br/> 17 refunding meetings.<br/> 18 BY MS. WILLIAMS:<br/> 19 Q. And you were able to retain a copy of the<br/> 20 agreement; is that right?<br/> 21 A. I left that room in 1994 with a one page<br/> 22 front and back copy of that document.<br/> 23 Q. When you left in 1994 with a copy of the<br/> 24 document and I'm talking about before August of 2001<br/> 25 between that time, did you ever review the agreement?</p>   |

25 (Pages 345 to 348)

Peter Davis, Jr.

April 20, 2006

Washington, DC

| Page 349   | Page 351  |
|--|---|
| <p>1 A. No, in fact I got back to the office</p> <p>2 obviously I filed it in an unmarked file folder and</p> <p>3 forgot about it until like August of 2001 or so.</p> <p>4 Q. Did you have any further conversations</p> <p>5 Mr. Anderson about the agreement?</p> <p>6 A. No.</p> <p>7 Q. You said that the embargo -- I believe you</p> <p>8 testified the embargo was mentioned at every</p> <p>9 Wednesday quarterly refunding conference that you</p> <p>10 attended; is that right?</p> <p>11 MR. THEODOROU: Objection.</p> <p>12 THE WITNESS: That's correct.</p> <p>13 BY MS. WILLIAMS:</p> <p>14 Q. Did you -- so you heard the term embargo</p> <p>15 at the Wednesday quarterly refunding conferences?</p> <p>16 MR. THEODOROU: Objection.</p> <p>17 THE WITNESS: Yes.</p> <p>18 BY MS. WILLIAMS:</p> <p>19 Q. Did you ever ask anyone what embargo</p> <p>20 meant?</p> <p>21 A. No.</p> <p>22 Q. Did you have an understanding as to what</p> <p>23 it meant?</p> <p>24 MR. THEODOROU: Objection.</p> <p>25 THE WITNESS: Yes.</p>                | <p>1 A. At the corner of 14th and F Street on the</p> <p>2 north side of the street.</p> <p>3 Q. Did you make any calls inside the Treasury</p> <p>4 building?</p> <p>5 A. No.</p> <p>6 Q. Why not?</p> <p>7 MR. THEODOROU: Objection.</p> <p>8 THE WITNESS: I was calling people before</p> <p>9 the embargo time and I was not going to do that</p> <p>10 inside the building, I did it outside.</p> <p>11 BY MS. WILLIAMS:</p> <p>12 Q. You discussed earlier when Mr. Theodorou</p> <p>13 was asking you questions about your understanding of</p> <p>14 the purpose behind an embargo --</p> <p>15 MR. THEODOROU: Objection.</p> <p>16 BY MS. WILLIAMS:</p> <p>17 Q. Could you tell me again what you thought</p> <p>18 the purpose of an embargo was?</p> <p>19 MR. THEODOROU: Objection.</p> <p>20 THE WITNESS: It was to make sure that the</p> <p>21 information went out at one time and to give</p> <p>22 reporters an opportunity to have the time to put</p> <p>23 together an accurate reporting of what had been</p> <p>24 disclosed.</p> <p>25 BY MS. WILLIAMS:</p>   |
| Page 350   | Page 352  |
| <p>1 BY MS. WILLIAMS:</p> <p>2 Q. And why didn't you ever ask anyone what</p> <p>3 embargo meant?</p> <p>4 MR. THEODOROU: Objection.</p> <p>5 THE WITNESS: Because I thought I</p> <p>6 understood what it meant.</p> <p>7 BY MS. WILLIAMS:</p> <p>8 Q. Do you understand the term embargo</p> <p>9 prohibited you from telling your clients about the</p> <p>10 cancellation of the 30-year bond on October 31st</p> <p>11 before 10:00 a.m.?</p> <p>12 A. Yes.</p> <p>13 MR. THEODOROU: Objection.</p> <p>14 Just for the record, could you just slow</p> <p>15 down a little bit so I can raise my objections?</p> <p>16 THE WITNESS: I understand.</p> <p>17 MR. THEODOROU: Objection to the question</p> <p>18 BY MS. WILLIAMS:</p> <p>19 Q. But you did call clients on October 31st,</p> <p>20 before 10:00 a.m. and told them about the</p> <p>21 cancellation of the 30-year bond; is that right?</p> <p>22 MR. THEODOROU: Objection.</p> <p>23 THE WITNESS: Yes.</p> <p>24 BY MS. WILLIAMS:</p> <p>25 Q. Where did you make these telephone calls?</p> | <p>1 Q. How did you come to this understanding?</p> <p>2 A. I saw embargoes in operation in my</p> <p>3 previous work experience. I don't recall anybody</p> <p>4 ever explaining specifically what an embargo meant,</p> <p>5 it was just assumed you won't. I never got into a</p> <p>6 discussion with anybody like Mr. Anderson or anybody</p> <p>7 else about what -- it just -- I just never had an</p> <p>8 explanation and I never asked for one.</p> <p>9 Q. You testified earlier today about</p> <p>10 embargoes that were you aware of in other agencies,</p> <p>11 departments and on the Hill?</p> <p>12 A. Right.</p> <p>13 Q. In those others -- the other embargoes</p> <p>14 that you're aware of in these other agencies and</p> <p>15 departments on the Hill, did any of them allow</p> <p>16 someone who received embargoed information to convey</p> <p>17 that information to the public before the embargo</p> <p>18 expired?</p> <p>19 MR. THEODOROU: Objection.</p> <p>20 THE WITNESS: No.</p> <p>21 MS. WILLIAMS: I just have one final</p> <p>22 question.</p> <p>23 BY MS. WILLIAMS:</p> <p>24 Q. You entered into a plea agreement with the</p> <p>25 U.S. Attorney's Office; is that right?</p> |

26 (Pages 349 to 352)

Peter Davis, Jr.

Washington, DC

April 20, 2006

| Page 353   | Page 355  |
|--|---|
| 1 A. Correct.  | 1   |
| 2 Q. Was that agreement separate from the                | 2   |
| 3 agreement that you entered into with the SEC?          | 3   |
| 4 A. I --  | 4 _____<br>Signature of the Witness                   |
| 5 MR. STANCIL: I don't know if he knows the              | 5   |
| 6 legal significance of that.                            | 6 SUBSCRIBED AND SWORN to before me this _____ day of |
| 7 MR. THEODOROU: Objection.                              | 7 _____, 20____.                                      |
| 8 BY MS. WILLIAMS:                                       | 8   |
| 9 Q. Do you know if anyone from the SEC signed           | 9 _____<br>Notary Public                              |
| 10 that plea agreement?                                  | 10  |
| 11 A. I don't know, I really don't recall. I             | 11 My Commission Expires: _____                       |
| 12 know there was a judgment from the SEC and I know     | 12  |
| 13 there was a judgment from the U.S. District Court.    | 13  |
| 14 MS. WILLIAMS: I'd like to go off the                  | 14  |
| 15 record. There are only five minutes off the tape, I   | 15  |
| 16 don't know if I have any more questions but I want to | 16  |
| 17 renew my notes.                                       | 17  |
| 18 THE VIDEOGRAPHER: Do you want me to                   | 18  |
| 19 switch?   | 19  |
| 20 MS. WILLIAMS: Yes.                                    | 20  |
| 21 THE VIDEOGRAPHER: Here marks the end of               | 21  |
| 22 video tape number two. Going off the record, the      | 22  |
| 23 time on the screen is 12:39:39.                       | 23  |
| 24 (Recess.)   | 24  |
| 25 THE VIDEOGRAPHER: Here marks the                      | 25  |
| Page 354   |   |
| 1 beginning of videotape number 3, going back on the     |   |
| 2 record the time on the screen is 12:48:32.             |   |
| 3 MS. WILLIAMS: I don't have any further                 |   |
| 4 questions for you, Mr. Davis, at this time.            |   |
| 5 Thank you.   |   |
| 6 THE WITNESS: Thank you.                                |   |
| 7 MR. THEODOROU: No further questions,                   |   |
| 8 thank you, Mr. Davis.                                  |   |
| 9 THE VIDEOGRAPHER: Here marks the end of                |   |
| 10 volume number 2 in the videotape deposition of Peter  |   |
| 11 Davis.  |   |
| 12 Going off the record the time on the                  |   |
| 13 screen is 12:48:50.                                   |   |
| 14 (Whereupon, at 12:48 p.m., the taking of              |   |
| 15 the instant deposition ceased.)                       |   |
| 16   |   |
| 17   |   |
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| 25   |   |

27 (Pages 353 to 355)



## ADDRESS BOOK

List # 3

All Clients

Last Modified on 5/11/01

28 addresses

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Page #1

| Fax Number   | Company            | Last Name        | First Name | Phone Number      | Billing Code | Department |
|--------------|--------------------|------------------|------------|-------------------|--------------|------------|
| 202-293-3416 | Bank of Tokyo      | Tochisako        | Atsumasa   | 202-463-0477      |              |            |
| 301-652-5831 | Capitol Analysts   | Sweet            | Stu        | 301-951-9161      |              |            |
| 914-925-8856 | Capra Asset Ma.    | Capra            | Jim        | 914-925-7777      |              |            |
| 212-834-6640 | Chase Securities   | Glassman         | Jim        |                   |              |            |
| 212-429-3616 | Dresdner, Klein    | Logan            | Kevin      | 212-429-4970      |              |            |
| 202-265-9473 | Embassy of Japan   | Katayama         | Kazuyuki   | 202-238-6724      |              |            |
| 617-371-0673 | Fidelity Manage    | Ernsbo-Mattingly | Lisa       | 617-563-7788      |              |            |
| 212-902-4110 | Goldman Sachs      | Youngdahl        | John       | 212-902-8124      |              |            |
| 212-486-6475 | International Inv. | Hyman            | Ed         |                   |              |            |
| 202-861-0790 | Johnson Smick I.   | Johnson          | Manley     | 202-861-0770      |              |            |
| 212-586-6901 | Macquarie Holdi.   | Robertson        | Rory       |                   |              |            |
| 617-954-7641 | Massachusetts F.   | Nothorn          | Stephen    | 617-954-5887      |              |            |
| 212-219-9093 | Medley Advisors    | Medley           | Richard    |                   |              |            |
| 212-761-0309 | Morgan Stanley     | Greenlaw         | Dave       | 212-761-7157      |              |            |
| 212-664-1141 | Nexus              | Jell             | Thomas     |                   |              |            |
| 312-444-4132 | Northern Trust     | Kasrial          | Paul       |                   |              |            |
| 973-802-9138 | Prudential Secu.   | Lamp             | Evan       | 973-367-4814      |              |            |
| 617-760-8383 | Putnam Investm.    | Maki             | Dean       |                   |              |            |
| 203-614-2030 | SAC Capital Man.   | Weiner           | John       | 203-614-2041      |              |            |
| 312-641-6955 | Sangamon Tradi.    | Moore            | Noel       | 312-984-8293      |              |            |
| 01144020798  | Schroder Salom.    | Horne            | J. Paul    |                   |              |            |
| 262-240-3274 | Stark Investment   | Wood             | John       |                   |              |            |
| 609-683-9580 | Stone & McCarthy   | McCarthy         | Ward       | 609-683-5521      |              |            |
| 703-243-2266 | Strategic Invest.  | Franz            | Katy       | 703-243-3737 x... |              |            |
| 212-980-7014 | The Conference     | Fosler           | Gail       | 212-339-0300      |              |            |
| 617-737-9280 | Tudor Investme.    | Monaco           | Peter      |                   |              |            |
| 202-833-4104 | Tudor Investme.    | Dugger           | Rob        | 202-833-4100      |              |            |
| 312-537-1203 | Zurich Kemper      | Hale             | David      | 312-537-1760      |              |            |



DC 001496

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Pete E-Mail Sent.txt

by quarter. There may be quarters with no buybacks." Treasury has "no target" amount to retire.

10 year reissuance in October won't be repeated. Fisher said "I regret that we felt it necessary to hold the October auction [reopening]...Given the number of fails in October, we had to act [in the 10 year, but not the 5 year]...It seemed to work as we hoped...It's certainly something I hope we never have to repeat."

Cash management bills will be avoided if possible. "It's certainly our hope to work with the 4 week bill instead."

Is Treasury concentrating its borrowing on the short end? "You draw the correct inference, but I wouldn't put too fine a point on it."

"There is a wrinkle in the yield curve in 2003 and 2004," Fisher said. "We have an opportunity to smooth out the curve."

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Subject: Pete Davis 10/31/01 calls  
Date: Mon, 05 Nov 2001 16:38:59 -0500  
From: Pete Davis <pete@daviscap.com>  
To: "Minsker, Marty" <Martin.Minsker@BakerBotts.com>,  
"Bennett, Brad" <brad.bennett@bakerbotts.com>,  
"Spearing, Mary" <mary.spearing@bakerbotts.com>

Marty, Mary, and Brad:

A Verizon Wireless representative just read me the phone calls I made last Wednesday morning, 10-31-01, before 10 a.m. They record just the city and the phone number. I added who I talked to and what happened with that call.

I can't explain how the phone calls start this early, because I left the Treasury meeting, which supposedly ended at 9:28 a.m., and took at least a few minutes to exit Treasury to a bench near the corner of 14th and F Streets, N.W. I remember looking at my watch, which I set regularly by the National Time Clock, when I rose to leave the meeting, and it was 9:28 a.m.

9:28 a.m. 609-683-5521 Princeton, N.J. Ward McCarthy, Stone & McCarthy 10 a.m. embargo. Detailed conversation.

9:32 a.m. 914-925-7707 Rye, NY. Bill Cohen, Capra Asset Mgmt. 10 a.m. embargo. Detailed conversation.

9:33 a.m. 203-863-6715 Greenwich, CT. Chris Long, Tudor Investment Corp., 10 a.m. embargo. Detailed conversation. I've never met Chris, so I can't be sure I was talking to him. I asked for him, and am reasonably sure, it was him, but I can't be certain.

9:34 a.m. 203-614-2400 Stamford, CT \_\_\_\_\_, SAC Capital. Don't know who I talked to. Larry Supinski wasn't in. 10 a.m. embargo. Detailed conversation.

9:35 a.m. 212-902-8124 NY, NY John Youngdahl, Goldman Sachs. 10 a.m. embargo. Detailed conversation.

9:37 a.m. 312-984-1331 Chicago. Didn't get through to Bob Falconer, Sangamon Trading. Can't remember if I left a message. I don't think so. If yes, it was a short 10 a.m. embargo and main points.

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DC 002545

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Pete E-Mail Sent.txt

9:38 a.m. 617-954-5887 Boston, MA. Didn't get through to Steve Nothern, Massachusetts Financial Services. Left a short message, 10 a.m. embargo and main points.

9:39 a.m. 617-563-7788 Boston, MA. Didn't get through to Lisa Emsbo-Mattingly, Fidelity Management & Research Co. She was still out on maternity leave. Left no message. Talked to a receptionist and ended the call with no message. I spent a minute trying to find that name and number in my Palm Pilot, gave up, and called my assistant.

9:41 a.m. 202-543-4324 Washington, DC. Allyson Sullivan, Davis Capital. She checked my computer contact information and gave me the information for Lisa's superior.

9:44 a.m. 617-563-0573 Boston, MA. Didn't get through to Lisa's superior at Fidelity, Ann Punzak. No message.

9:45 a.m. 617-760-8616 Boston, MA. Didn't get through to Dean Maki, Putnam Investments. He's not a client, but I hoped he would become one. No message.

9:46 a.m. 212-397-3672 NY, NY. Tomas Jelf, Nexus. He's not a client, although I hoped he would become one. He was a client at another firm a few years ago. Didn't get through. No message.

9:47 a.m. 212-834-5102 NY, NY. Jim Glassman, J.P. Morgan. Didn't get through. No message.

9:49 a.m. 212-834-5102 NY, NY. Jim Glassman, J.P. Morgan. No clear recollection, but I believe I left a short message, 10 a.m. embargo and main points.

9:51 a.m. 212-219-9096 NY, NY. Peter Hamilton, Medley Advisers. 10 a.m. embargo, short conversation re main points.

9:53 a.m. 617-760-8816 Boston. Didn't get through again to Dean Maki, Putnam Investments. No clear recollection, but I don't think I left a message.

9:55 a.m. 212-397-3672 Tomas Jelf, Nexus. 10 a.m. embargo and short conversation re main points.

9:56 a.m. 704-388-1839 Charlotte, NC. Habeeb Ahmed Bank of America. He's not a client, but I hoped he would become one. I helped him with some questions re fiscal policy a few weeks ago. He wasn't in. No message.

9:58 a.m. 662-7000. Washington, D.C. Tim Wiss of the National Press Building re new office space for me.

That's it.

Pete

**REDACTED**

## **Exhibit H**

**Cited Excerpts from the Deposition of Jill Ouseley  
(July 24, 2006)**

Page 1

Page 3

IN THE UNITED STATES DISTRICT COURT  
DISTRICT OF MASSACHUSETTS

CASE NO. 05-CV-10983 NMG

Securities and Exchange  
Commission,

Plaintiff,

vs.

Steven E. Nothern,

Defendant.

VIDEOTAPED DEPOSITION OF JILL OUSELEY

July 24, 2006  
1:58 p.m. - 5:17 p.m.

Esquire Deposition Services  
1819 Main Street  
Suite 250  
Sarasota, Florida 34236

REPORTED BY:

NANCY E. PAULSEN  
Registered Professional Reporter  
Notary Public, State of Florida at Large  
Esquire Deposition Services - Sarasota, Florida  
941-364-2200 (800-838-2814)  
Job No.: N 811629

Thomas M. McGivern, Esquire  
Assistant General Counsel  
U.S. Department of the Treasury  
1500 Pennsylvania Avenue, NW  
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Attorney for Department of the Treasury

Also Present:

Cliff Biram, III, videographer

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1 A. Certainly.  
 2 Q. Now, are there any other documents that you  
 3 once had that --  
 4 THE DEPONENT: May I borrow your pen for a  
 5 moment?  
 6 THE COURT REPORTER: Yes.  
 7 MR. ROSSETTI: No, don't write on that.  
 8 MR. TOONE: Yeah.  
 9 THE DEPONENT: No, don't write on that. All  
 10 right. Well, give me a --  
 11 MR. ROSSETTI: We'll give you another copy.  
 12 THE DEPONENT: Because I'll forget if I don't  
 13 write it down.  
 14 MR. THOMAS: Actually, why don't we give her a  
 15 paper that's not -- doesn't look like an exhibit.  
 16 MR. TOONE: Oh, okay.  
 17 THE DEPONENT: Oh, it --  
 18 BY MR. TOONE:  
 19 Q. We'll do this at break, we'll just write a  
 20 note, if that's all right.  
 21 A. Perhaps you would just simply give me your  
 22 card and I'll write on that.  
 23 Q. I will do that.  
 24 MR. THOMAS: I think she wanted to do it now  
 25 so she didn't forget.

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1 MR. TOONE: Okay.  
 2 MR. THOMAS: So I think that's a legitimate  
 3 thing for her.  
 4 THE DEPONENT: Thank you.  
 5 If he forgets, it's not my problem, right?  
 6 BY MR. TOONE:  
 7 Q. There is my card.  
 8 A. Thank you.  
 9 Q. Are you ready?  
 10 A. Yes.  
 11 Q. Now, I had asked you before, are there any  
 12 other documents that you once had that would be  
 13 responsive to the subpoena but you no longer have?  
 14 A. I don't remember any.  
 15 Q. Now, you said that you had read some  
 16 information about Peter Davis from these documents that  
 17 you downloaded from the S.E.C.'s website; is that  
 18 correct?  
 19 A. Yes.  
 20 Q. Do you have any independent knowledge of who  
 21 Peter Davis is, aside from those documents?  
 22 A. I don't remember any.  
 23 Q. Do you recall ever meeting with a man named  
 24 Peter Davis during your time at Treasury?  
 25 A. No.

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1 Q. Do you recall ever speaking on the phone with  
 2 a man named Peter Davis during your time at Treasury?  
 3 A. I don't remember.  
 4 Q. Do you recall ever speaking with any of your  
 5 colleagues at Treasury about a man named Peter Davis?  
 6 A. Before 2001?  
 7 Q. I'm sorry, you're asking me? Yes.  
 8 A. Yes.  
 9 Q. Before 2001. Yes. I'm sorry.  
 10 A. No.  
 11 Q. No.  
 12 Do you recall ever admitting a man named Peter  
 13 Davis to a meeting or conference at the Treasury  
 14 Department?  
 15 A. I do not remember.  
 16 Q. Did you ever observe Roger Anderson introduce  
 17 a man named Peter Davis to Paul Malvey?  
 18 A. I don't remember that.  
 19 Q. Did you ever hear Roger Anderson describe a  
 20 man named Peter Davis as, quote, one of the good guys,  
 21 end quote?  
 22 A. I don't remember.  
 23 Q. Did you ever --  
 24 A. I'm smiling, because he turned not to be,  
 25 didn't he.

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1 Q. Did you ever observe any employee at Treasury  
 2 introduce Peter Davis to Roger Anderson?  
 3 A. No.  
 4 Q. And do you recall yourself ever introducing  
 5 Peter Davis to Roger Anderson?  
 6 A. No.  
 7 Q. Do you recall Paul Malvey ever telling you,  
 8 when you were working at Treasury, that he had received  
 9 a telephone call from Peter Davis?  
 10 A. No.  
 11 Q. Do you recall ever telling Paul Malvey that it  
 12 was okay for Peter Davis to be admitted to a Treasury  
 13 conference?  
 14 A. No.  
 15 Q. Do you recall ever speaking with Lula Tyler  
 16 about Peter Davis?  
 17 A. No.  
 18 Q. Did Lula Tyler have authority on her own to  
 19 clear persons into Treasury meetings or conferences?  
 20 A. No.  
 21 Q. Who at Treasury had that authority?  
 22 A. The Office of Public Affairs.  
 23 Q. Anyone outside the Office of Public Affairs?  
 24 A. There was no formal written document that I'm  
 25 aware of.

7 (Pages 25 to 28)

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1 A. Well, I don't know about bylaws. That might  
 2 be too strong.  
 3 Q. But you believe that these documents included  
 4 guidelines that addressed, in part, issues of  
 5 confidentiality?  
 6 A. Yes.  
 7 Q. Are you aware of any other written  
 8 confidentiality agreements that were used by the  
 9 Treasury Department?  
 10 A. No.  
 11 Q. Are you aware of any written confidentiality  
 12 agreements that was signed by persons attending  
 13 quarterly refunding press conferences?  
 14 A. Treasury document?  
 15 Q. Yes, ma'am.  
 16 A. No.  
 17 Q. Are you aware of any written confidentiality  
 18 agreement that was signed by Roger Anderson?  
 19 A. No.  
 20 Q. Are you aware of any written confidentiality  
 21 agreement that was signed by a man named Peter Davis?  
 22 MR. ROSSETTI: Objection.  
 23 A. No.  
 24 BY MR. TOONE:  
 25 Q. Did Treasury have any written policies or

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1 procedures on embargos?  
 2 A. Not that I know of.  
 3 Q. Were there any unwritten policies or  
 4 procedures?  
 5 A. Yes.  
 6 Q. And what were those unwritten policies or  
 7 procedures?  
 8 A. That a release was -- it would have a time on  
 9 it, and it was embargoed for release, which meant don't  
 10 release it before the time that was on the press  
 11 release.  
 12 Q. Who at Treasury was responsible for  
 13 establishing an embargo time?  
 14 A. Public affairs or other Treasury officials.  
 15 It would be senior Treasury officials that asked for a  
 16 embargo -- an embargo.  
 17 Q. Do you recall the procedure that was used to  
 18 arrive at embargo times during your time as Office --  
 19 Director of Office of Market Finance?  
 20 A. The procedure was to have the embargo time be  
 21 ten minutes, maybe, after -- they would close a press  
 22 conference, no more questions, and then embargoed until  
 23 approximately ten minutes after that.  
 24 Q. Do you recall a member of the Office of Public  
 25 Affairs ever asking or polling the reporters present as

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1 to what the embargo time should be?  
 2 MR. ROSSETTI: Objection.  
 3 A. No. I -- I don't remember.  
 4 BY MR. TOONE:  
 5 Q. And how long was the embargo time, in your  
 6 experience?  
 7 A. About ten minutes.  
 8 Q. Now, what was your understanding of what the  
 9 embargo at a quarterly refunding press conference  
 10 prohibited people from doing?  
 11 A. Calling their offices, or any market  
 12 participants, or anybody but their wife.  
 13 Q. A person could call his wife?  
 14 A. Yes.  
 15 Q. Yes.  
 16 Anyone else could be called under the embargo?  
 17 A. No. We didn't have a written rule, but that  
 18 would be a standing, you know.  
 19 Q. Could a -- in your understanding, could a  
 20 reporter call his or her office with the news?  
 21 A. No.  
 22 Q. How did Treasury enforce its embargos at  
 23 quarterly refunding press conferences?  
 24 A. If there was a problem, the person was not  
 25 allowed in again.

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1 Q. So the penalty for violating the embargo was  
 2 not to be admitted to a future conference?  
 3 A. That's right.  
 4 Q. Was there any other penalty associated with  
 5 the embargo?  
 6 A. Not that I know of.  
 7 Q. If a person violated an embargo, would he be  
 8 subject to criminal penalties?  
 9 A. I don't know.  
 10 Q. Did you -- would you know if a person  
 11 violating an embargo, would he be subjected to civil  
 12 penalties, such as a fine?  
 13 MR. ROSSETTI: Objection.  
 14 A. I don't know.  
 15 BY MR. TOONE:  
 16 Q. Were persons who attended Treasury press  
 17 conferences told anything about the penalties for  
 18 violating embargos?  
 19 MR. ROSSETTI: Objection.  
 20 A. I don't recall any discussion of it.  
 21 BY MR. TOONE:  
 22 Q. Are you aware of any instance during your time  
 23 at Treasury in which an embargo was violated?  
 24 A. No.  
 25 Oh. Oh. Oh. Oh. There was information that

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1 had with Mr. Malvey?  
 2 A. No.  
 3 Q. Do you have any recollection of that  
 4 conversation today other than what you've already  
 5 testified to?  
 6 A. No.  
 7 Q. Have you discussed with Mr. Malvey Peter  
 8 Fisher on subsequent occasions?  
 9 MR. ROSSETTI: You mean subsequent to the  
 10 discussion --  
 11 BY MR. TOONE:  
 12 Q. Subsequent to this -- this phone conversation  
 13 that took place sometime in late 2001.  
 14 A. I'm trying to sort through my memory.  
 15 Q. Sure. Take your time.  
 16 A. I don't recall any.  
 17 Q. Do you know -- are you familiar with the  
 18 manner in which the quarterly refunding announcement was  
 19 released on October 31st, 2001?  
 20 MR. ROSSETTI: Objection.  
 21 A. I'm not sure I understand your question.  
 22 BY MR. TOONE:  
 23 Q. Do you have any knowledge about how the  
 24 quarterly refunding announcement was released by the  
 25 Treasury Department on October 31st, 2001?

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1 A. No.  
 2 MR. ROSSETTI: Objection.  
 3 A. I don't.  
 4 BY MR. TOONE:  
 5 Q. Do you recall ever discussing this matter with  
 6 Mr. Malvey?  
 7 A. No.  
 8 Excuse me. Discussing the release time?  
 9 Q. Yes, ma'am.  
 10 A. I do remember talking about the release time.  
 11 Q. What do you remember talking about?  
 12 A. It was an unusually-long time to wait to  
 13 release the information to the public. The embargo was  
 14 unusually long.  
 15 Q. Is that your opinion or is that Mr. Malvey's  
 16 opinion?  
 17 A. It was my recollection of the Treasury's  
 18 history.  
 19 Q. And what is your recollection of what happened  
 20 differently on October 31st, 2001?  
 21 MR. ROSSETTI: Objection.  
 22 A. Having read the newspapers or any other?  
 23 BY MR. TOONE:  
 24 Q. Based on all the information that you know  
 25 about what happened.

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1 A. That I -- that Davis apparently called his  
 2 people that he -- or I guess they were subscribers to  
 3 his service, and told them about the refunding  
 4 announcement.  
 5 Q. And how does --  
 6 A. Prior to the 10 o'clock time.  
 7 Q. Prior to the 10 o'clock time?  
 8 A. Um-hum (affirmative).  
 9 Q. Did Treasury ever use a 10 o'clock embargo  
 10 time on previous occasions?  
 11 MR. ROSSETTI: Objection.  
 12 A. I don't recall.  
 13 BY MR. TOONE:  
 14 Q. Do you recall Treasury ever using a 10 o'clock  
 15 embargo time during your tenure as Director of Office of  
 16 Market Finance?  
 17 MR. ROSSETTI: Objection.  
 18 A. I don't recall.  
 19 BY MR. TOONE:  
 20 Q. Do you recall Treasury ever using a fixed  
 21 embargo time, and by that, I mean fixed ahead of the  
 22 time that the conference was given?  
 23 MR. ROSSETTI: Objection.  
 24 A. No.  
 25 BY MR. TOONE:

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1 Q. I'm sorry, no, that never happened; or no, you  
 2 don't recall?  
 3 A. I don't recall.  
 4 Q. You testified earlier that you recalled the  
 5 embargo being set ten minutes in advance? Do you recall  
 6 giving that testimony today?  
 7 A. Ten minutes from the end -- the end of that  
 8 press conference, usually.  
 9 Q. Do you recall any quarterly refunding --  
 10 A. We're only talking about quarterly refunding  
 11 press conferences.  
 12 Q. That's right.  
 13 A. Releases. Okay.  
 14 Q. Can you recall any quarterly refunding  
 15 conference where that procedure was not followed?  
 16 MR. ROSSETTI: Objection.  
 17 A. No.  
 18 BY MR. TOONE:  
 19 Q. Do you have an opinion as to whether it's good  
 20 policy to use a fixed embargo time as opposed to setting  
 21 a time ten minutes after the conclusion of the press  
 22 conference?  
 23 A. No.  
 24 MR. ROSSETTI: Objection.  
 25 BY MR. TOONE:

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1 Q. You have no opinion?  
 2 A. No.  
 3 MR. ROSSETTI: Objection.  
 4 A. I have no opinion.  
 5 MR. ROSSETTI: I would just note that she was  
 6 -- the witness was quick with her response. I  
 7 didn't get the objections in there. I just want  
 8 that noted for the record.  
 9 THE DEPONENT: Excuse me.  
 10 MR. TOONE: Standing objection to that line of  
 11 questions.  
 12 BY MR. TOONE:  
 13 Q. Do you recall discussing with Mr. Malvey the  
 14 possibility that any type of embargo procedure might be  
 15 more likely to result in a leak of information?  
 16 MR. ROSSETTI: Objection.  
 17 A. It seems obvious on its face, the more time  
 18 you have, the more the possibility.  
 19 BY MR. TOONE:  
 20 Q. And why is that obvious on its face?  
 21 MR. ROSSETTI: I just want to object to the  
 22 answer as being nonresponsive, but.  
 23 BY MR. TOONE:  
 24 Q. You testified that it is more -- it is obvious  
 25 on its face that a longer period results in a greater

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1 risk of early disclosure; is that correct?  
 2 A. Yes.  
 3 Q. And why is that?  
 4 A. I -- I can't answer you.  
 5 Q. Do you recall testifying earlier, and I'm  
 6 reading on page 31, line 4, "That normal practice had  
 7 been to try to get it out -- get the announcement out on  
 8 the wire as quickly as possible, because everybody knew  
 9 it was coming, and everybody knew there was a chance  
 10 that it would leak"?  
 11 MR. ROSSETTI: Objection.  
 12 BY MR. TOONE:  
 13 Q. Do you recall giving that testimony?  
 14 A. No.  
 15 Q. Do you agree or disagree with that statement?  
 16 MR. ROSSETTI: Objection.  
 17 THE DEPONENT: Should I answer?  
 18 MR. ROSSETTI: Yes.  
 19 BY MR. TOONE:  
 20 Q. Please.  
 21 A. Yes.  
 22 Q. Do you recall testifying in 2002 that  
 23 political appointees at Treasury were not as zealous  
 24 about guarding confidential information as career staff?  
 25 A. No.

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1 MR. ROSSETTI: Objection.  
 2 BY MR. TOONE:  
 3 Q. No?  
 4 Let me refer you to --  
 5 MR. ROSSETTI: Again, I would just note the  
 6 objection, that -- the objection was -- I tried to  
 7 get it in before she answered. She's answering  
 8 quickly.  
 9 If you would -- if you wouldn't mind just  
 10 waiting a second after he asks the question --  
 11 THE DEPONENT: Excuse me.  
 12 MR. ROSSETTI: -- so I get an opportunity to  
 13 make or pose an objection.  
 14 THE DEPONENT: Excuse me. Of course.  
 15 BY MR. TOONE:  
 16 Q. It's a little artificial to do, because we're  
 17 used to responding immediately, but please do give  
 18 Mr. Rossetti a chance to object.  
 19 Let me just refer you quickly to Exhibit --  
 20 this is Exhibit --  
 21 MR. MCGIVERN: 3.  
 22 BY MR. TOONE:  
 23 Q. -- 3, page 40. And I'm reading at line 10.  
 24 And let me read out loud. "And we reinforced  
 25 that -- the staff, the Treasury staff reinforced that

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1 with the political appointees, because they would come  
 2 in and have a lot of Wall Street ties, and they were not  
 3 as zealous about guarding our information as the  
 4 Treasury staff was."  
 5 Did I read that correctly?  
 6 A. That's what the page says, yep.  
 7 Q. Do you have any recollection of giving that  
 8 testimony?  
 9 MR. ROSSETTI: Objection.  
 10 A. No.  
 11 BY MR. TOONE:  
 12 Q. Do you agree or disagree with that statement?  
 13 MR. ROSSETTI: Objection.  
 14 A. I don't remember.  
 15 BY MR. TOONE:  
 16 Q. But I'm asking now, right now, do you agree or  
 17 disagree with that statement?  
 18 MR. ROSSETTI: Objection.  
 19 A. I can't think of any instances now where this  
 20 would be the case.  
 21 MR. TOONE: Can we take a quick break and I'll  
 22 just review my notes and see --  
 23 MR. ROSSETTI: Sure.  
 24 THE DEPONENT: Is it possible that we almost  
 25 are finished?

## **Exhibit I**

**Cited Excerpts from the Deposition of Paul Malvey  
(June 23, 2008)**

Washington, DC

Page 1

1 UNITED STATES DISTRICT COURT

2 DISTRICT OF MASSACHUSETTS

3 - - - - - )

4 UNITED STATES SECURITIES AND )

5 EXCHANGE COMMISSION, )

6 Plaintiff, )

7 v. ) No. 05-10983 (NMG)

8 STEVEN E. NOTHERN, )

9 Defendant. )

10 - - - - - )

11 Washington, D.C.

12 Friday, June 23, 2006

13 Deposition of PAUL FRANCIS MALVEY, a witness herein,  
14 called for examination by counsel for Defendant in  
15 the above-entitled matter, pursuant to agreement, the  
16 witness being duly sworn by CHERYL A. LORD, a Notary  
17 Public in and for the District of Columbia, taken at  
18 the offices of FOLEY HOAG LLP, 1875 K Street, N.W.,  
19 Suite 800, Washington, D.C., at 10:10 a.m., Friday,  
20 June 23, 2006, and the proceedings being taken down  
21 by Stenotype by CHERYL A. LORD, RPR, CRR, and  
22 transcribed under her direction.

23

24

25

| Page 62  | Page 64   |
|--|---|
| <p>1 A. -- wire services.</p> <p>2 Q. -- they have been able to?</p> <p>3 A. Because prior to October 31, the press</p> <p>4 conference would start at 9 but get over whenever the</p> <p>5 announcement and the Q's and A's were done.</p> <p>6 Then the press officer would get up there,</p> <p>7 look at the clock and say, it's 9:25, how about 9:40</p> <p>8 for the embargo. And she would have to get a</p> <p>9 response. It wasn't like, people, you know, walking</p> <p>10 out of the room and not paying attention to her.</p> <p>11 They -- the practice was, the people in</p> <p>12 the room would say, okay, so that they actively</p> <p>13 responded to the statement that the press officer</p> <p>14 made.</p> <p>15 Q. Okay. But that was also in connection</p> <p>16 with sort of the press of- -- well, the press officer</p> <p>17 was -- was proposing an amount of time as a period</p> <p>18 that would be adequate for the reporters to prepare</p> <p>19 their stories?</p> <p>20 A. Correct.</p> <p>21 MR. ROSSETTI: Objection.</p> <p>22 A. And the decision was made.</p> <p>23 She would propose that, and sometimes they</p> <p>24 would say, no, it's a lot, how about 9:50.</p> <p>25 Q. Okay.</p>             | <p>1 MR. SHOPE: What time is --</p> <p>2 MR. ROSSETTI: M-m-m?</p> <p>3 THE VIDEOGRAPHER: Off the record --</p> <p>4 THE COURT REPORTER: I have to hear what</p> <p>5 he's saying, you guys.</p> <p>6 THE VIDEOGRAPHER: -- at 11:16:30 PM --</p> <p>7 AM -- excuse me -- on June 23rd, 2006.</p> <p>8 (Recess.)</p> <p>9 MR. SHOPE: Actually, before we go back</p> <p>10 to -- this is on the record.</p> <p>11 (Discussion off the record.)</p> <p>12 MR. SHOPE: Off the video record.</p> <p>13 In the interest of keeping things moving</p> <p>14 as quickly, Ms. Williams, I sent you a letter</p> <p>15 yesterday regarding sort of more narrowly tailored</p> <p>16 requests for documents that we're seeking on a</p> <p>17 voluntary -- or that you're going to attempt to</p> <p>18 obtain on a voluntary basis from other government</p> <p>19 departments.</p> <p>20 And one thing I'd like to make sure is</p> <p>21 clear is that we would like to have the bylaws of the</p> <p>22 borrowing advisory committee at least insofar as they</p> <p>23 relate to confidentiality.</p> <p>24 MS. WILLIAMS: Is that in your letter?</p> <p>25 MR. SHOPE: It's not in my letter.</p> |
| Page 63  | Page 65   |
| <p>1 A. And so she would say, okay, 9:50, does</p> <p>2 that work for everybody. And everybody would</p> <p>3 acknowledge it's 9:50, not 9:45.</p> <p>4 Q. Okay. So the reporters could sometimes</p> <p>5 say, we want it to be shorter, we want it to be</p> <p>6 longer and --</p> <p>7 A. But the decision was the press officer's.</p> <p>8 Usually if the Q's and A's went 20</p> <p>9 minutes, the reporters probably wanted a little bit</p> <p>10 more time to write up the story.</p> <p>11 Q. Okay.</p> <p>12 MR. ROSSETTI: John, we've probably been</p> <p>13 going for about an hour, so if can we take a break.</p> <p>14 MR. SHOPE: We can take a short break if</p> <p>15 you like.</p> <p>16 MR. ROSSETTI: Sure.</p> <p>17 MR. SHOPE: I'd like to keep moving just</p> <p>18 so that I'm not delayed on my flight back to Boston</p> <p>19 and Mr. Malvey isn't detained longer than necessary.</p> <p>20 MR. ROSSETTI: I have the same interest in</p> <p>21 getting this over as quickly as you do, John,</p> <p>22 although I don't have a flight to Boston.</p> <p>23 MR. SHOPE: This is off the record.</p> <p>24 THE VIDEOGRAPHER: This is the end of tape</p> <p>25 number 1 in the video deposition of Paul F. Malvey.</p> | <p>1 That's why --</p> <p>2 MS. WILLIAMS: If you could send me a</p> <p>3 followup letter just stating that, that would be</p> <p>4 helpful --</p> <p>5 MR. SHOPE: Sure.</p> <p>6 MS. WILLIAMS: -- because I'm not --</p> <p>7 MR. SHOPE: Okay.</p> <p>8 MS. WILLIAMS: -- going to get --</p> <p>9 MR. SHOPE: I'm probably not going to be</p> <p>10 able to send you the followup letter today --</p> <p>11 MS. WILLIAMS: I understand.</p> <p>12 MR. SHOPE: -- just in the time that we</p> <p>13 had discussed, so I just wanted to let me know.</p> <p>14 MS. WILLIAMS: Great.</p> <p>15 MR. SHOPE: I think we can go back on the</p> <p>16 video record.</p> <p>17 THE VIDEOGRAPHER: This is the beginning</p> <p>18 of tape 2 in the videotape deposition of Mr. Paul F.</p> <p>19 Malvey. On the record at 11:25:04 AM, on June 23rd,</p> <p>20 2006.</p> <p>21 BY MR. SHOPE:</p> <p>22 Q. And Mr. Malvey, I just wanted to follow up</p> <p>23 on something that we discussed before the break.</p> <p>24 When the borrowing advisory committee</p> <p>25 would deliver its recommendation to the secretary in</p>  |

17 (Pages 62 to 65)

| Page 78   | Page 80   |
|---|---|
| <p>1 Q. Okay.</p> <p>2 A. It's --</p> <p>3 Q. M-hm. So would it be fair to say that to</p> <p>4 get into the diplomatic room, one has to get past the</p> <p>5 guards to get into the Treasury building.</p> <p>6 Correct?</p> <p>7 You got to say yes or no.</p> <p>8 MR. ROSSETTI: Objection.</p> <p>9 A. Oh, I'm sorry.</p> <p>10 Yes.</p> <p>11 BY MR. SHOPE:</p> <p>12 Q. Okay.</p> <p>13 A. You say, get past the guards, if they've</p> <p>14 been cleared in and have proper ID and all that -- I</p> <p>15 don't --</p> <p>16 Q. Yes.</p> <p>17 A. Sure.</p> <p>18 Q. Once the person is in the building, there</p> <p>19 is no further guard process to actually get into the</p> <p>20 room; is that correct?</p> <p>21 A. Not --</p> <p>22 MR. ROSSETTI: Objection.</p> <p>23 A. Not formally.</p> <p>24 Go ahead.</p> <p>25 BY MR. SHOPE:</p>  | <p>1 quarterly refunding conference?</p> <p>2 A. I don't think so.</p> <p>3 Q. Was there a reason why it was used on</p> <p>4 October 31, 2001?</p> <p>5 A. I'm not sure.</p> <p>6 But part of it was, there's a big seal of</p> <p>7 the Treasury -- secretary O'Neill had used this room</p> <p>8 for some press conferences, so there's a big curtain</p> <p>9 back here with the seal of the Treasury, and there</p> <p>10 was a raised area in the back, I think was used for</p> <p>11 cameras.</p> <p>12 Q. Okay. Would it be fair to say that the</p> <p>13 diplomatic reception room was something of a grander</p> <p>14 room than the conference secretary --</p> <p>15 A. No, not at all.</p> <p>16 MR. ROSSETTI: Objection.</p> <p>17 BY MR. SHOPE:</p> <p>18 Q. Okay. Well, I mean, you mentioned that</p> <p>19 the secretary of the Treasury himself would hold</p> <p>20 press conferences in the diplomatic room from time to</p> <p>21 time; is that correct?</p> <p>22 A. Paul O'Neill did, and I don't know where</p> <p>23 other secretaries held conferences.</p> <p>24 Q. Okay. But did you -- did you say that</p> <p>25 there was -- there was a -- there was a seal of the</p> |
| Page 79   | Page 81   |
| <p>1 Q. Okay. The -- well, is there one</p> <p>2 informally?</p> <p>3 A. As I mentioned before, if -- if somebody</p> <p>4 showed up -- I don't know -- I know I've done it</p> <p>5 maybe 20 years ago. Somebody looks in the room and I</p> <p>6 say, can I help you. And they say, I'm here for</p> <p>7 this. I say, okay, this is it. Or if they say, oh,</p> <p>8 what's going on in here. I say, it's a press</p> <p>9 conference, and it's --</p> <p>10 Q. Okay. But there was nobody who was</p> <p>11 charged with ascertaining the identity of every</p> <p>12 single person who was attending this press</p> <p>13 conference?</p> <p>14 MR. ROSSETTI: Objection.</p> <p>15 A. I don't know. I don't know.</p> <p>16 Because I -- I wasn't around the back door</p> <p>17 of -- I wasn't around the door that everybody entered</p> <p>18 for the prior 10, 15 years. I was always up in the</p> <p>19 front of the room.</p> <p>20 BY MR. SHOPE:</p> <p>21 Q. Okay. This is in the secretary's</p> <p>22 conference room you're speaking of?</p> <p>23 A. Correct, and also in the other room.</p> <p>24 Q. Okay. By the way, other than October 31,</p> <p>25 2001, was the diplomatic room ever used for the</p> | <p>1 Treasury behind the speaker in the diplomatic room?</p> <p>2 A. Yeah, like a little --</p> <p>3 Q. Okay.</p> <p>4 A. -- piece of carpet up on the wall.</p> <p>5 Q. Okay. And that was lacking from the</p> <p>6 secretary's conference room that was used on the</p> <p>7 other occasions?</p> <p>8 A. I think there was a grandfather clock --</p> <p>9 MR. ROSSETTI: Objection.</p> <p>10 A. -- back there.</p> <p>11 BY MR. SHOPE:</p> <p>12 Q. Okay. And you mentioned that the</p> <p>13 diplomatic room had a -- had a space for television</p> <p>14 cameras in the back?</p> <p>15 A. I'm not sure.</p> <p>16 I recall seeing cameras in there --</p> <p>17 Q. M-hm.</p> <p>18 A. -- and it -- the layout was so different.</p> <p>19 When I walked in, I looked around a little bit more</p> <p>20 than usual, and I said, oh, that camera is back</p> <p>21 there, oh, they're up there, and, oh, the seating is</p> <p>22 now all facing --</p> <p>23 Q. M-hm.</p> <p>24 A. -- the front.</p> <p>25 Q. Was it -- was it stadium-type seating?</p>  |

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1 Q. Okay.  
2 A. You know, like congressional testimony,  
3 the principal sits there on the back bench or has  
4 index cards and hands him the index cards.  
5 Q. Oh, okay.  
6 A. I wouldn't use index cards. I would just  
7 tell him.  
8 Q. Okay. Oh, so -- so there was never --  
9 there was never a Q and A that was direct with Paul  
10 Malvey.  
11 It was always Paul Malvey --  
12 A. The principal.  
13 Paul Malvey worked for the principal. He  
14 made sure the principal knew that.  
15 Q. Okay. All right.  
16 Now, prior to October 31, 2001, did you  
17 ever hear of any discussion or question about the  
18 propriety -- propriety of Mr. Davis's attending the  
19 quarterly refunding conferences?  
20 A. I don't recall, no, because I didn't know  
21 everybody in the room at any point in time.  
22 I knew him, and I recognized most of the  
23 faces, but I can't say that I looked around the room  
24 and counted faces that I didn't recognize, but there  
25 weren't many.

1 conference -- in this case I think her name was Betsy  
2 Holland -- and say, welcome to the da-da-da-da-da-da,  
3 DAS, so-and-so --  
4 (Discussion off the record.)  
5 A. Welcome to the quarterly financing press  
6 conference, such and such an official will be  
7 presenting the policy statement. There will be time  
8 for questions afterwards. At the end of the press  
9 conference, I will assign an embargo time.  
10 That's how they all started. And at the  
11 end of the press conference, except for this one --  
12 at the end of the press conference, the -- when the  
13 questions were getting inane, I'd either high -- give  
14 a high sign to the public affairs officer, or the  
15 principal would give kind of a pleading sign, and she  
16 would step in and say, okay, one more question.  
17 And the last question is asked. Then the  
18 press affairs person would go to the podium, and on  
19 all previous conferences would look up at the clock  
20 and say, okay, it's 9:22, how about if it's embargoed  
21 to quarter -- 9:45.  
22 And the protocol was -- okay, and the  
23 protocol was that people in the room responded, okay,  
24 and if they didn't respond, she would say, okay,  
25 again --

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1 Q. M-hm. The -- so you never heard of  
2 Mr. Davis being thrown out of a quarterly refunding  
3 conference or anything like that?  
4 MR. ROSSETTI: Objection.  
5 A. I never heard of that.  
6 BY MR. SHOPE:  
7 Q. Did you ever hear of anybody being thrown  
8 out of a quarterly refunding conference?  
9 A. Don't recall hearing that.  
10 Q. Now, we were talking before about the  
11 embargo that would govern the quarterly refunding  
12 conferences.  
13 Did anybody ever have to write -- to sign  
14 anything or write anything down with regard to  
15 agreeing to follow that embargo?  
16 A. Not that I'm aware of.  
17 Q. Okay. Was there -- was there ever any  
18 written policy about embargoes to your knowledge?  
19 A. I'm not aware of a written policy, but it  
20 was a clear policy.  
21 Q. Well, if it wasn't written down, what --  
22 how was it clear?  
23 A. Because it was announced at the beginning  
24 of a press conference that -- the public affairs  
25 person would get up there at the beginning of a press

1 Q. Okay.  
2 A. -- so that people would respond.  
3 Q. Okay. Was there any kind of -- sometimes  
4 there would be like 35 people in this room.  
5 Right?  
6 A. Oh, 20 around the table, another 15 --  
7 yeah, maybe as many.  
8 Q. Was there any kind of a -- sort of a roll  
9 call of everybody there where every single person  
10 says, yes, okay, I agree?  
11 A. It's -- there was not a roll call, but it  
12 was very clear: You wait till the embargo is over or  
13 up.  
14 Q. So in other words --  
15 A. There was nothing unambiguous about it.  
16 Q. This was -- this was -- this was just a  
17 unison, she says, okay, and then if somebody doesn't  
18 like the period of time that's being assigned, they  
19 can pipe up and say, no, I need more time, or --  
20 A. That happened on occasion, saying that  
21 there's a lot this time, how about 5 more minutes,  
22 how about 9:50, and she would look to me or somebody  
23 else saying -- and she would say, okay, 9:50, is that  
24 agreeable with everybody.  
25 And people would respond.

26 (Pages 98 to 101)

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1 assistant was permitted to attend the quarterly  
2 refunding conference to which he refers in exhibit 4?

3 A. I mean, I don't know whether she -- I  
4 don't know. I mean, if I saw this, I'd hand it to  
5 Lula, and I'd say, clear this person in.

6 Q. Okay. So -- now, do you have any  
7 knowledge -- was Mr. Davis ever required to sign  
8 anything indicating that he would comply with the em-  
9 -- comply with the embargo?

10 MR. ROSSETTI: Objection.

11 A. Not that I know of.

12 It would be just adding too much  
13 information. I think everybody in that room knew  
14 that we embargo it, because it's such sensitive  
15 financial market information that everybody in that  
16 room knew that that embargo applied universally.

17 BY MR. SHOPE:

18 Q. Actually, let me -- let me -- let me ask  
19 about that.

20 Was -- was the information that was being  
21 disclosed at all of the quarterly refunding  
22 conferences of a sensitive market-moving nature?

23 A. I would say it was a sensitive nature, but  
24 not necessarily market-moving.

25 Q. Okay.

1 anticipated that that information would be  
2 market-moving?

3 A. Was -- information such as eliminating a  
4 security, one would expect that it would have -- have  
5 an impact on the markets, yes.

6 Q. Okay. So was -- was there ever any  
7 quarterly refunding conference where going into the  
8 quarterly refunding conference you anticipated that  
9 the information that was going to be disclosed at the  
10 conference would have an effect on -- on the market?

11 And I'm talking about effect on pri- --  
12 prices --

13 A. Yeah, that's correct.

14 Q. -- and securities.

15 A. That's correct.

16 I mean, that's -- I never focused on that.  
17 I mean, I didn't walk into a conference, say, boy, is  
18 this going to move the markets.

19 I walked in the conference and say that  
20 this is -- this is the decision we're making, and --  
21 Q. M-hm.

22 A. -- hope it's the right one.

23 Q. Okay. Now, the decision that was made on  
24 October -- or the decision that was announced on  
25 October 31 was among other things that the lon- --

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1 A. Some -- some -- some are ho-hum.

2 Q. Okay. I mean, if you had to estimate, how  
3 often would you say that the information at the  
4 quarterly refunding conference was going to be  
5 mark- -- would have been market-moving?

6 A. I've never put a pencil to something like  
7 that.

8 Q. I'm just asking you to give me, you know,  
9 a ballpark estimate.

10 A. I mean, I -- I'm not trying to be  
11 difficult, but I don't recall how many -- let's say  
12 out of 8 or 10 quarterly financings that how many out  
13 of that had significant information.

14 I mean, we would go through periods of  
15 time where they were ho-hum for 6, 8 in a row, and  
16 other times not.

17 Q. Okay. Well, let me ask you this: October  
18 31, 2001 --

19 A. M-hm.

20 Q. -- was the information that was disclosed  
21 at that quarterly refunding conference market-moving  
22 in your view?

23 A. It was enormous.

24 Q. Okay. Was there ever any other quarterly  
25 refunding -- and let me ask you this: Was it

1 the issuance of the long bond was going to be  
2 suspended.

3 Correct?

4 A. Correct.

5 Q. Okay. First of all, were you involved in  
6 the decision-making process that culminated in that  
7 announcement?

8 A. Yes, I was.

9 Q. Okay. And when did that process  
10 begin?

11 A. I'm not sure, but I would say weeks in  
12 advance and probably at the direction of Pete Fisher  
13 where he would say, I want you to take a hard look at  
14 the long bond's performance and going ahead what our  
15 financing needs would be -- or how our financing  
16 needs would be met with or without it --

17 Q. M-hm.

18 A. -- because the -- the idea of eliminating  
19 the long bond was not a novel concept. It had been  
20 thrown about over the previous couple of years a  
21 number of times. I mentioned earlier there was even  
22 a conference over the AEI, American Enterprise  
23 Institute, on Treasury financing going ahead, and  
24 some of the papers they were talking about  
25 eliminating, not eliminating the long bond.

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| Page 158   | Page 160  |
|--|---|
| <p>1 long bond.</p> <p>2 MR. ROSSETTI: Objection.</p> <p>3 BY MR. SHOPE:</p> <p>4 Q. Is that correct?</p> <p>5 A. The notion of no longer having to have a</p> <p>6 long bond was related to the notion that the debt is</p> <p>7 being paid down and we don't need as many vehicles to</p> <p>8 finance the government.</p> <p>9 We had already eliminated other things.</p> <p>10 We eli- -- the long bonds are (phonetic) 30 years, we</p> <p>11 had already eliminated a year ago --</p> <p>12 Q. M-hm.</p> <p>13 A. -- way into the short end. We had gone</p> <p>14 from monthly to quarterly on other issues. We'd been</p> <p>15 doing --</p> <p>16 Q. M-hm.</p> <p>17 A. -- things.</p> <p>18 Q. Okay. And was it your view that</p> <p>19 undersecretary Fisher would have announced suspension</p> <p>20 of issuance of the long bond at the quarterly</p> <p>21 refunding conference back in August if he had been</p> <p>22 confirmed as of that point?</p> <p>23 MR. ROSSETTI: Objection.</p> <p>24 A. No.</p> <p>25 I mean, a lot of arguments -- we do -- we</p> | <p>1 And -- well, once undersecretary Fisher</p> <p>2 was confirmed, was -- was there a discussion under</p> <p>3 way at that point about possibly suspending the</p> <p>4 issuance of the long bond?</p> <p>5 A. I would say there was discussion under way</p> <p>6 at some point before October 31 where Peter said,</p> <p>7 let's vet this issue from all sides, and that was --</p> <p>8 that was the task primarily of me and my office, and</p> <p>9 probably had meetings with Tim Bitsberger and Brian</p> <p>10 Roseboro in the days meeting up to a meeting with</p> <p>11 Peter.</p> <p>12 Q. Okay. Now, first of all, who -- who --</p> <p>13 who made the decision?</p> <p>14 A. We had a meeting in Peter's office. And</p> <p>15 it was Peter, Brian Roseboro, Tim Bitsberger, Jeff</p> <p>16 Huther, and myself. We went around the table, and I</p> <p>17 would say generally myself, Tim Bitsberger, Jeff</p> <p>18 Huther were in favor of -- and probably Brian --</p> <p>19 well, Brian wasn't from the financial markets. He</p> <p>20 was from the AIGA, so he -- and he was also very new,</p> <p>21 so he wasn't -- he had -- he was still the -- going</p> <p>22 down the learning curve on some of this, and he was</p> <p>23 certainly a very, very bright man, but -- anyway, he</p> <p>24 participated in the discussion.</p> <p>25 And it was my opinion that if we were to</p>  |
| Page 159   | Page 161  |
| <p>1 do a lot of discussing of policy before a final</p> <p>2 decision is made, and so I -- no.</p> <p>3 BY MR. SHOPE:</p> <p>4 Q. Okay. Now, when was the -- so</p> <p>5 undersecretary Fisher was confirmed approximately</p> <p>6 when?</p> <p>7 A. Before October 31.</p> <p>8 Q. Okay.</p> <p>9 A. I -- before October 31.</p> <p>10 Q. All right.</p> <p>11 A. I -- Brian Roseboro I think may have been</p> <p>12 confirmed in late July just before the August</p> <p>13 refunding. I'm not quite sure about Peter.</p> <p>14 Q. Okay. And so you don't know whether he</p> <p>15 was confirmed in August or not?</p> <p>16 A. I don't recall.</p> <p>17 Q. Okay. Was --</p> <p>18 A. I know he didn't partake in the quarterly</p> <p>19 financing as undersecretary.</p> <p>20 Q. The August --</p> <p>21 A. Right.</p> <p>22 Q. -- quarterly?</p> <p>23 A. But he could have been undersecretary and</p> <p>24 just had Brian do it because he was so new.</p> <p>25 Q. Okay. All right.</p>  | <p>1 eliminate it, we should. Phrase around the building</p> <p>2 was, give the markets another bite at the apple,</p> <p>3 meaning we could announce it now and -- but still</p> <p>4 have another auction in February, or we could</p> <p>5 announce it in February, that, hey, this is the last</p> <p>6 auction.</p> <p>7 And Peter made the case that that's not --</p> <p>8 his view was, that's not practical, why wait until</p> <p>9 February. And there was some argument.</p> <p>10 Number 1 was, we were already down to</p> <p>11 offering only 15 billion a year versus a high of</p> <p>12 maybe 44 billion, and to offer it again in February</p> <p>13 the way we had been doing it, it was issuing 10</p> <p>14 billion with a 5 billion reopening -- I'm going to</p> <p>15 get technical -- but if -- if we just had the</p> <p>16 February offering, that would have left a real</p> <p>17 orphaned small amount 30-year out there as the last</p> <p>18 one, so to commit to the February offering and still</p> <p>19 give the markets, at least a more sizeable one would</p> <p>20 be committing to a May or August '02 reopening.</p> <p>21 So it wouldn't really be just one more</p> <p>22 offering really. It would be 2 more. And Peter's</p> <p>23 attitude was, why, we don't need the money, and if</p> <p>24 we -- if we have the February one, we're actually</p> <p>25 committing to 2, carries us to this next summer.</p> |

41 (Pages 158 to 161)

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1 And in that environment, there was -- in  
2 October, we're still forecasting paying down the debt  
3 by 2009. And as I mentioned before, I think I had --  
4 the bond had already become toxic, meaning its value  
5 was distorted in the markets because of the  
6 incredible scarcity premium, and Peter's argument  
7 was, this is a market distortion, let's just get rid  
8 of it.

9 And he carried the meeting.

10 Q. I'm sorry.

11 When you say, he carried the meeting,  
12 meaning he outranked everybody?

13 A. No, no.

14 I mean, his arguments -- he had stronger  
15 arguments against -- let's say my position than I  
16 could develop against his position.

17 Q. Well, did you disagree with his position?

18 I mean, understanding of course that you  
19 weren't going to be insubordinate, but did you  
20 disagree with the decision that was taken?

21 A. Well, in the absence of certainty, I mean,  
22 I could think that I have a better view, but I'm not  
23 quite sure my view in the absence of certainty is  
24 better than his. And he has his reasons for -- I  
25 could see what he was talking about.

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1 And I thought differently. But at the end  
2 of the day, you know, he thought his view outweighed  
3 mine, and he argued more effectively.

4 Q. Well, do you recall telling people  
5 afterwards that you thought that it was a stupid and  
6 politically driven decision?

7 A. I would never say "stupid" about our --  
8 politically driven?

9 Q. Yeah.

10 A. I don't recall saying that, no.

11 Q. You don't recall telling Mr. Anderson that  
12 this was a highly political decision?

13 A. Roger Anderson?

14 Q. Yeah.

15 A. I might have said something to Anderson  
16 like, he probably walked in the building wanting to  
17 get rid of the long bond, but -- and I might have  
18 said something to the effect that -- because I think  
19 I went back and looked at it from 1990 -- or '89  
20 forward that when we eliminated an issue, we had  
21 given another auction, you know, and I may have  
22 thought that, you know, this isn't the way we've done  
23 bus- -- done it in the past, and I disagree with  
24 doing it this way.

25 Q. This was about a month and a half after

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1 the attacks of September 11, 2001.

2 Correct?

3 A. Yeah, that's what I mean, yeah.

4 Q. And it was already participated that the  
5 war on terrorism was going to have a fiscal effect on  
6 the United States.

7 Correct?

8 A. I bet if you go back and look at the  
9 budget that was released in January of '02, it still  
10 had surpluses as far as the eye could see.

11 Q. Okay. You don't recall telling anybody  
12 that the decision to eliminate the long bond was  
13 based on a false premise that the surpluses were  
14 going to continue for -- notwithstanding the fact  
15 that we had a war on terrorism coming up?

16 A. I mean, I don't recall that conversation  
17 with Roger, but I mean, I might have conversations  
18 with Roger I wouldn't have with anybody else.

19 Q. Did you tell that to anybody?

20 MR. ROSSETTI: Excuse me.

21 What is "that" specifically, so that --

22 MR. SHOPE: Yeah.

23 BY MR. SHOPE:

24 Q. Do you recall telling anyone that the  
25 decision to suspend the long bond was either foolish

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1 or imprudent in light of the fact that we'd had  
2 terrorist attacks and budget -- continuing budget  
3 surpluses could not be relied upon?

4 MR. ROSSETTI: Objection.

5 A. Okay.

6 THE WITNESS: I'm holding this quarter so  
7 I pause.

8 A. The -- I worked on -- I worked with OMB on  
9 the budget in December, and it was still -- and I  
10 don't think we saw the magnitude of terrorism back  
11 then.

12 The only context I could say that I  
13 probably would have tell (sic) somebody close like  
14 Roger is the notion I would have done it differently,  
15 but I really felt more comfortable with giving them  
16 another bite at the apple.

17 And that's -- that was the only thing that  
18 if I were under secretary, I would have done  
19 differently. I -- it wasn't, do we eliminate the  
20 long bond or keep the long bond.

21 It was how do we eliminate the long bond.  
22 That was the question.

23 It wasn't like, this is a stupid political  
24 decision because of the war on terror. If someone  
25 says that today in 2006, it's -- they aren't putting

June 23, 2006

Paul F. Malvey

Washington, DC

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1 mean, I managed an issuance program of 3.8 trillion  
 2 dollars, and I had 11 people working for me, and if  
 3 we were in a meeting and somebody is going to get in  
 4 touch with the ECB, it's certainly not going to be  
 5 anybody from my office.  
 6 It would be somebody from the  
 7 international side of the house, and it would  
 8 probably be somebody up the food chain talking to  
 9 somebody over on the food chain on the international  
 10 side of the house, but it's -- I don't recall.  
 11 Q. M-hm. So this --  
 12 A. But I also don't recall any resolution.  
 13 And I mean, there -- there were fixed --  
 14 I'm sorry -- there were rumors in the fixed income  
 15 market -- supposedly specific rumors -- at least 5  
 16 since about a year ago now on when and why John Snow  
 17 was going to retire. You know, he was going to  
 18 end -- he was going to end the -- supposedly last  
 19 year as soon as the congressional session was over,  
 20 he was going to go back to Richmond and play golf for  
 21 the rest of his life.  
 22 The -- and I'm just saying, rumors are  
 23 common. They -- they -- the -- even -- so common  
 24 there's even a phrase in the fixed income market:  
 25 buy on the rumor, sell on the news.

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1 Q. Well, did you ever learn that people were  
 2 buying on the rumor?  
 3 A. I -- I printed out a -- yeah -- does --  
 4 buy on the rumor, sell on the news.  
 5 I printed out a Bloomberg page on the  
 6 price of the bond sometime that morning, and I  
 7 printed it from my -- for some reason I think I  
 8 printed it -- it was probably around -- close to 11 I  
 9 did it, so I printed it probably from the opening  
 10 until -- I saw a page somewhere that ended at 10, and  
 11 I think I probably printed it until whatever time it  
 12 was, because I wanted to see what happened after the  
 13 announcement too.  
 14 Q. Well, I think -- are you referring to a  
 15 page that I printed -- had here on the table?  
 16 Why don't I mark that.  
 17 Is this what you're referring to as what  
 18 you just saw recently?  
 19 A. Yeah.  
 20 I saw this recently.  
 21 MR. SHOPE: This is exhibit 8.  
 22 (Malvey Exhibit No. 8  
 23 was marked for  
 24 identification.)  
 25 A. First of all, this is the next day. On

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1 the bottom it says, November 1. And I -- I don't  
 2 want to -- whatever.  
 3 The person who did this wasn't a real  
 4 market follower or an economist, because he wouldn't  
 5 stop at 10, because you'd want to know what the price  
 6 action was after 10 in addition to before 10.  
 7 See if I ran this thing, I'd run it from  
 8 8:30 through 3 in the afternoon.  
 9 BY MR. SHOPE:  
 10 Q. Okay.  
 11 A. And when I didn't run it, I think it was  
 12 like 8:30 through 11.  
 13 Q. Well, this shows the price pretty much  
 14 going up from 20 after 9.  
 15 Right?  
 16 MR. ROSSETTI: Objection.  
 17 A. I want to say 20 after 9 the price going  
 18 up, because look at 8:50 to 9. Then look at like  
 19 9:05 to 9:10. Net-net. 9:05 to 9:20, it went down.  
 20 And the range that it went down is about the range  
 21 that it went up until a little after 9:30.  
 22 So I don't see trend movement until the  
 23 pop after 9:35, because I don't see any trend between  
 24 9 and 9:30.  
 25 BY MR. SHOPE:

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1 Q. Okay. And did you ever hear about  
 2 tightness in the bond market the day before?  
 3 A. The day before, but you mean I think that  
 4 had been on special repo market for a year. I don't  
 5 think the dealers were even trading because they were  
 6 afraid they weren't going to get it back. This email  
 7 says something about more tightening, but -- well, 5s  
 8 30 flattening is a yield curve saying -- because at  
 9 5s/30s is a trade -- 5, slash, 30s.  
 10 MR. ROSSETTI: Do you want to just  
 11 identify what he's talking about.  
 12 BY MR. SHOPE:  
 13 Q. You're referring to something on the lower  
 14 portion of exhibit 7 where there's an excerpt of an  
 15 email apparently sent to Jill Cetina by a primary  
 16 dealer contact.  
 17 Is that your reference, sir?  
 18 A. Correct, in the first paragraph.  
 19 We definitely heard rumors as early as 9  
 20 AM that -- which were flattening 5/30s, meaning the  
 21 5, slash, 30s trade prior to the official news.  
 22 Someone told me they actually saw it on your Web site  
 23 at 9:50. I did hear something about from other  
 24 people it going up on our Web site prematurely, but  
 25 5/30s, the spread between 5-year notes and 30-year

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|--|---|
| <p>1 refunding conferences?</p> <p>2 A. I don't -- I do not think so. I don't --</p> <p>3 I don't think so. I don't recall.</p> <p>4 Q. You didn't call up Ms. Ousley to say, hey,</p> <p>5 what about Pete Davis coming into these conferences?</p> <p>6 A. I called her, and the conversation about</p> <p>7 Pete Davis came up, but it was -- I don't -- you</p> <p>8 know, it's been so long. I thought -- I thought I</p> <p>9 called her because somebody -- I don't know if it was</p> <p>10 SEC or our own lawyers or somebody -- was</p> <p>11 interviewing me or setting up an appointment to</p> <p>12 interview me, and they asked me if I knew Jill</p> <p>13 Ousley's telephone number.</p> <p>14 And I said yes. And they asked me for it.</p> <p>15 And I said, well, let me call her and give her -- you</p> <p>16 know, out of courtesy, give her a heads-up that you'd</p> <p>17 be calling.</p> <p>18 And in the course of that conversation,</p> <p>19 yeah, you know, what the hell is going on. I said,</p> <p>20 well, have you heard about this. And then I probably</p> <p>21 asked her, you know, who -- who is Pete Davis.</p> <p>22 Q. And what did she say?</p> <p>23 A. She said she didn't -- she didn't</p> <p>24 recognize the name.</p> <p>25 Q. Now, did you discuss at all with</p> | <p>1 Okay.</p> <p>2 Q. First of all, it had become apparent that</p> <p>3 there were people who had been trading in the market</p> <p>4 on the news of the suspension of the long bond before</p> <p>5 10 o'clock.</p> <p>6 MR. ROSSETTI: Objection.</p> <p>7 BY MR. SHOPE:</p> <p>8 Q. That was your surmise at that point?</p> <p>9 MR. ROSSETTI: Objection.</p> <p>10 He's never made any statement to that</p> <p>11 effect, John.</p> <p>12 A. I see the price movement. I don't know.</p> <p>13 You know -- I mean, I don't want to get between the 2</p> <p>14 of you. I see price movement.</p> <p>15 BY MR. SHOPE:</p> <p>16 Q. Okay. In other words, at least it was</p> <p>17 being -- it was being suggested that there had been</p> <p>18 trading on the news of the suspension of the long</p> <p>19 bond before 10 clock.</p> <p>20 Correct?</p> <p>21 MR. ROSSETTI: Objection.</p> <p>22 A. I see price movement, and --</p> <p>23 BY MR. SHOPE:</p> <p>24 Q. Well --</p> <p>25 A. I mean, what I would like to do before I</p>           |
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| <p>1 Ms. Ousley sort of who was to blame for the events of</p> <p>2 October 31, 2001?</p> <p>3 A. What do you mean, blame?</p> <p>4 MR. ROSSETTI: Objection.</p> <p>5 BY MR. SHOPE:</p> <p>6 Q. Well, it had become apparent that some</p> <p>7 people knew about the suspension of long bonds --</p> <p>8 A. Right.</p> <p>9 Q. -- before the general public?</p> <p>10 A. Yeah.</p> <p>11 MR. ROSSETTI: Objection.</p> <p>12 BY MR. SHOPE:</p> <p>13 Q. Okay.</p> <p>14 A. Yeah.</p> <p>15 Q. So that was something the Treasury</p> <p>16 considered to be not a good idea.</p> <p>17 Right?</p> <p>18 MR. ROSSETTI: Objection.</p> <p>19 A. I'm sorry.</p> <p>20 I did lose track of what you were saying.</p> <p>21 BY MR. SHOPE:</p> <p>22 Q. Yeah.</p> <p>23 I'm sorry.</p> <p>24 I just want to take this in simple steps.</p> <p>25 A. Yeah.</p>  | <p>1 say that --</p> <p>2 Q. Is?</p> <p>3 A. -- would be able to go back to when we</p> <p>4 went from monthly to quarterly 5s, when we went</p> <p>5 monthly to quarterly 2s, and we went from 4 tens to 2</p> <p>6 a year, and see what the market movement was before</p> <p>7 that.</p> <p>8 Q. Let's not make this more complicated than</p> <p>9 it needs to be.</p> <p>10 Okay?</p> <p>11 I'm not asking you to deliver an expert</p> <p>12 opinion.</p> <p>13 Okay?</p> <p>14 What I am asking about is, what was your</p> <p>15 state of mind after -- in the aftermath of the</p> <p>16 meeting that you had with Mr. Roseboro, Mr. Huther,</p> <p>17 and so forth.</p> <p>18 A. And Jimmy Capra saying they got the</p> <p>19 information from him.</p> <p>20 Q. Yes.</p> <p>21 A. Jimmy Capra didn't say -- or Jimmy Capra</p> <p>22 said he did not trade on it. But I figured if he's</p> <p>23 got Jimmy Capra as a client, he's got other people up</p> <p>24 there as a client.</p> <p>25 Q. Okay. All right. So there was a concern</p> |

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|---|---|
| <p>1 at least that some people might have traded on this</p> <p>2 information before 10 o'clock.</p> <p>3 Correct?</p> <p>4 MR. ROSSETTI: Objection.</p> <p>5 BY MR. SHOPE:</p> <p>6 Q. Okay.</p> <p>7 True?</p> <p>8 A. Yeah.</p> <p>9 Q. Okay. And there was inquiry going on as</p> <p>10 to how this whole thing might have happened.</p> <p>11 Right?</p> <p>12 MR. ROSSETTI: Objection.</p> <p>13 A. I don't know about the inquiry, but I</p> <p>14 mean, there was something -- yeah, we were trying to</p> <p>15 get to the bottom of it.</p> <p>16 BY MR. SHOPE:</p> <p>17 Q. Okay. And let's put it this way:</p> <p>18 Treasury was unhappy with the idea that some people</p> <p>19 might have traded on this information before 10</p> <p>20 o'clock.</p> <p>21 Is that fair to say?</p> <p>22 MR. ROSSETTI: Objection.</p> <p>23 A. I don't know Treasury -- SEC was more</p> <p>24 unhappy. I don't know. I mean, it's -- yeah, I</p> <p>25 mean, it's -- if it was some violation of the rules,</p>  | <p>1 See, other people were asking me questions --</p> <p>2 Q. M-hm.</p> <p>3 A. -- you know, like asking for Jill's number</p> <p>4 and what her role was, asking for Roger's number and</p> <p>5 what his role, asking me about Darcy Bradbury. And</p> <p>6 remember saying, you have to get that number from</p> <p>7 Roger Anderson.</p> <p>8 And the only 2 numbers I had were Jill and</p> <p>9 Roger, and so I may have -- again as I said as a</p> <p>10 courtesy to call them up and give them a heads-up</p> <p>11 that somebody from Washington may be calling them</p> <p>12 about their --</p> <p>13 Q. Okay. Do you recall telling Ms. Ousley</p> <p>14 that this problem had been caused by the hubris of</p> <p>15 Peter Fisher?</p> <p>16 MR. ROSSETTI: Objection.</p> <p>17 A. No, I don't know.</p> <p>18 I'm smiling because everything changed</p> <p>19 that day, but -- I mean, the process all changed that</p> <p>20 day, and that's why I'm smiling.</p> <p>21 BY MR. SHOPE:</p> <p>22 Q. Well, did you at any time believe that the</p> <p>23 problem of the premature disclosure of the suspension</p> <p>24 of the long bond had been caused by the hubris of</p> <p>25 Peter Fisher?</p> |
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| <p>1 we wanted to get to the bottom of it.</p> <p>2 Q. Well, you weren't indifferent to the idea</p> <p>3 of people trading on the information before the</p> <p>4 embargo?</p> <p>5 A. No, I'm not --</p> <p>6 MR. ROSSETTI: Objection.</p> <p>7 A. -- because I heard that, you know, Pete</p> <p>8 called Jimmy, and I assume that Pete called others,</p> <p>9 because he has -- he had on his Web site, you know,</p> <p>10 that was taken down a couple days later, but he</p> <p>11 had -- you know, get the Washington news before the</p> <p>12 rest of the markets, was a quote on his Web site.</p> <p>13 BY MR. SHOPE:</p> <p>14 Q. Okay. All right.</p> <p>15 So the -- so you spoke to Ms. Ousley.</p> <p>16 Did you speak to anybody else about --</p> <p>17 about who was responsible for this problem that some</p> <p>18 people seem to have known about the suspension of the</p> <p>19 long bond before 10 o'clock?</p> <p>20 MR. ROSSETTI: Objection.</p> <p>21 A. I don't recall. No, I don't.</p> <p>22 BY MR. SHOPE:</p> <p>23 Q. Did you talk to Mr. Anderson about this?</p> <p>24 A. That's what I was trying to think. That</p> <p>25 would have been the other person, but I don't recall.</p> | <p>1 A. Objection.</p> <p>2 I'll tell you what I thought --</p> <p>3 Q. Could you just answer my question first</p> <p>4 and then --</p> <p>5 A. Well, I --</p> <p>6 MS. WILLIAMS: He's answering your</p> <p>7 question. Don't cut off the witness.</p> <p>8 BY MR. SHOPE:</p> <p>9 Q. Answer my question yes or no. If you want</p> <p>10 to elaborate further, go ahead.</p> <p>11 MR. ROSSETTI: Objection to -- hold on --</p> <p>12 objection on instructing a witness how to answer a</p> <p>13 question.</p> <p>14 The witness will answer the question as he</p> <p>15 sees appropriate. If he doesn't answer your</p> <p>16 question, you can ask a followup, John.</p> <p>17 A. I agree that what happened that day in</p> <p>18 terms of Treasury's process was due to Peter Fisher,</p> <p>19 because he changed all that stuff.</p> <p>20 Now, to say it's due to the hubris of</p> <p>21 Peter Fisher is kind of like editorializing. Peter</p> <p>22 was famous for changing things. And most of the time</p> <p>23 it was an improvement.</p> <p>24 When he got to the New York Fed, the open</p> <p>25 market -- I'm sorry -- the New York Fed would do</p>  |

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1 open-market operations any time between 11 and 11:30,  
2 and the markets would be waiting, waiting, waiting.

3 So Peter decided to make it more just --  
4 you know, rather than people deciding to, hey, how  
5 about 11:20 this time, how about 11:24.

6 He got a 12-sided die, and the people in  
7 the open market went to roll the die, and whatever  
8 came up, that's when they went in for open-market  
9 operations, so -- and that was when he first started.

10 He changed a lot of things. When he got  
11 to Treasury, he did the same thing. Before he got  
12 there, I read a book on -- his father had written --  
13 a famous Harvard law professor.

14 And I also talked to half a dozen people  
15 at the New York Fed on, how do you work for Pete  
16 Fisher, he's a real challenging guy.

17 So and he want -- instead of having our  
18 announcement come out at the way I've explained it,  
19 it could be 9:40, 9:42, 9:45. He wanted to come out  
20 at a fixed time, and that's why the press release  
21 went out the day before.

22 He just wanted to change everything and  
23 not wait until the next week. He just wanted to do  
24 it now. That's just the way -- he's -- he's -- he's  
25 quite a presence.

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1 Q. Have you ever said to anybody, sir, that  
2 the premature disclosure of the suspension of the  
3 long bond was the fault of Pete Fisher?

4 MR. ROSSETTI: Objection.

5 A. I don't think so. I don't remember.

6 Look I'll just finish. I remember looking  
7 at the clock and saying, holy shit, that's a long  
8 time, because I think it got over 9:25, and it was  
9 10. But I wasn't thinking that there would be  
10 disclosure.

11 I -- it was -- if -- if I drive --  
12 whatever -- if I drive a -- I drive a Toyota, and all  
13 of a sudden I'm driving some other car that's  
14 completely different with stick transmission, and I  
15 say, God, this is really different, not necessarily  
16 good or bad, but it's really, really different -- I'm  
17 sitting there looking at that clock saying, what's  
18 different, what the heck is going on here. It was  
19 just like now we sit around for 25 minutes rather  
20 than 10 or 12 minutes.

21 BY MR. SHOPE:

22 Q. Did you tell my colleague, Robin Toone,  
23 last week, that the premature suspension of the long  
24 bond -- the premature disclosure of the suspension of  
25 the long bond was the fault of Peter Fisher?

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1 A. Did I talk to Robin Toone last week?

2 Q. Did you speak -- do you recall speaking to  
3 a colleague in my office about this matter?

4 A. Last week?

5 Q. Or last week or the week before, leading  
6 up to your deposition.

7 A. I don't think so.

8 Q. You don't recall speaking to a fellow  
9 named Robin Toone?

10 A. No.

11 I recall him calling me and setting up an  
12 appointment and stuff, but --

13 Q. You don't recall talking to him at all  
14 about the matter?

15 A. I mean, we may have talked about it a  
16 little bit, but --

17 Q. You don't recall telling Roger Anderson  
18 that this was the fault of Pete Fisher?

19 MR. ROSSETTI: Objection.

20 A. No.

21 I think ex post, I look back on the  
22 process and see that was a lot of time. It was  
23 probably too much time.

24 Now, to make the further leap, why do we  
25 have so much time. Well, the whole process was

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1 changed. Well, who changed the process. Pete Fisher  
2 changed the whole process.

3 MR. SHOPE: It's 3:15 and Mr. Rossetti had  
4 asked for a break at this time.

5 MR. ROSSETTI: Yeah, thanks.

6 THE VIDEOGRAPHER: Off the record at  
7 3:18:33 PM.

8 (Recess.)

9 (Mr. Rossetti and Ms. Ruddy left the  
10 room.)

11 THE VIDEOGRAPHER: We are back on the  
12 record at 3:40:51 PM.

13 MR. SHOPE: Great.

14 A couple of things: First of all,  
15 Mr. Rossetti has had to leave the deposition due to  
16 another matter, and there's an intern from the SEC,  
17 whose names escapes me.

18 MS. WILLIAMS: Her is Erica, and she also  
19 had to leave.

20 MR. SHOPE: Yeah.

21 BY MR. SHOPE:

22 Q. Now, while we were off the record,  
23 Mr. Malvey, you indicated a desire to speak further  
24 about some of the testimony that you've been giving.

25 Am I recalling that right?

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|--|---|
| <p>1 of sales of the 30-year bond, so that is -- that's</p> <p>2 not going to the question of whether or not there's a</p> <p>3 last bite at the apple.</p> <p>4 That's going to the question as to when</p> <p>5 you announce.</p> <p>6 A. No, because --</p> <p>7 MS. WILLIAMS: Objection.</p> <p>8 A. -- the reason that January 30 would be</p> <p>9 better is because we had a scheduled 30-year auction</p> <p>10 in February, and that's why it would have been better</p> <p>11 to announce it, because the investors -- it's just</p> <p>12 not finished out in this sentence here, because</p> <p>13 whoever wrote these notes didn't make the connection</p> <p>14 between the January 30 announcement and the February</p> <p>15 15 settlement of a 30-year bond.</p> <p>16 That's what -- that's the reason I was</p> <p>17 saying Jan 30 would would have been better for the</p> <p>18 announcement, because that would have been right</p> <p>19 before the sale of a preschedule -- already on the</p> <p>20 schedule 30-year bond.</p> <p>21 That's what I meant.</p> <p>22 BY MR. SHOPE:</p> <p>23 Q. Yeah, but you could have made the</p> <p>24 announcement on October 31 and then announced that</p> <p>25 there would be a last bite at the apple in February.</p> | <p>1 the time.</p> <p>2 And somebody asked me that, and after</p> <p>3 having been at the other side of the table listening</p> <p>4 to Peter's arguments about his view of the 30-year</p> <p>5 and having made my arguments about my view of the</p> <p>6 30-year, I think he would have made the same</p> <p>7 arguments in August.</p> <p>8 And so, yes, I -- I -- who the hell knows,</p> <p>9 but I think he would have made the same arguments in</p> <p>10 August. Whether we would have made the announcement</p> <p>11 in August is another thing, because he would have had</p> <p>12 to justify making the announcement in August to the</p> <p>13 rest of us too.</p> <p>14 Q. But I mean, but basically this gets the</p> <p>15 gist -- that was your opinion?</p> <p>16 A. Yeah, it gets the gist, yeah.</p> <p>17 Right.</p> <p>18 MS. WILLIAMS: Objection.</p> <p>19 A. All right. And the one, 2, 3 -- third</p> <p>20 full paragraph talking about Drew Matus.</p> <p>21 He came in -- I think he may have</p> <p>22 scheduled to meet with Jeff, but Jeff was also new.</p> <p>23 I think Jeff had only been there since August, I</p> <p>24 think.</p> <p>25 BY MR. SHOPE:</p>   |
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| <p>1 Right?</p> <p>2 MS. WILLIAMS: Objection.</p> <p>3 A. He could have.</p> <p>4 I mean, coulda, woulda, shoulda.</p> <p>5 It's -- it would have -- I'm sorry.</p> <p>6 I didn't mean to be disrespectful, but</p> <p>7 because there was such a scarcity premium on the</p> <p>8 security to start with, that would have given 3</p> <p>9 months for the markets to gyrate around and be more</p> <p>10 volatile at the long end because of all the</p> <p>11 uncertainty about its future, where if you made the</p> <p>12 announcement on January 30, the sale would be 5 days</p> <p>13 later, and WY market would have established the</p> <p>14 market price, and there was much less chance for</p> <p>15 volatility.</p> <p>16 BY MR. SHOPE:</p> <p>17 Q. Okay. So what else was inaccurate in</p> <p>18 exhibit 11?</p> <p>19 A. I'm not saying inaccurate.</p> <p>20 I'm just saying it didn't convey the</p> <p>21 flavor.</p> <p>22 And it's -- it -- the next sentence says:</p> <p>23 It was also Malvey's opinion that undersecretary</p> <p>24 Fisher would have made the announcement at the</p> <p>25 quarterly funding meeting if he had been confirmed of</p>   | <p>1 Q. You're speaking of Jeff Huther now?</p> <p>2 A. Jeff Huther. Right.</p> <p>3 And I think it was because Woody was</p> <p>4 either about -- was -- oh, here it is.</p> <p>5 He was vice chairman. The -- usually the</p> <p>6 chairman of the borrowing advisory committee, his</p> <p>7 staff works up these pro forma forecasts that I</p> <p>8 mentioned earlier today, and for some -- and the</p> <p>9 vice-chairman usually follows the chairman -- that's</p> <p>10 also almost pro forma.</p> <p>11 And the October meeting would have been</p> <p>12 the last meeting for the outgoing chairman, and Drew,</p> <p>13 some reason Woody asked Drew to do these things. He</p> <p>14 had never done them before.</p> <p>15 So he worked up these pro forma</p> <p>16 forecasts -- he had access to other ones out there</p> <p>17 and previous ones, and he worked up these pro forma</p> <p>18 forecasts. And I don't know if he came down to</p> <p>19 Washington specifically for that, but he asked Jeff,</p> <p>20 is it okay if I run these by you to tell me whether</p> <p>21 they're reasonable, a reality test or something like</p> <p>22 that.</p> <p>23 And I mean, it says that I spoke with him</p> <p>24 briefly, but it might have been -- "briefly" is --</p> <p>25 the 2 of them came into my office, and we put these</p> |

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1 things out on the table in front of us, and asking  
2 me, you know, does all this stuff look reasonable and  
3 stuff, so I -- it was -- I forget exactly what the  
4 nature of the conversation, but I might have said  
5 something like, what if it -- do you have any  
6 alternatives, what if Woody says, how about this, are  
7 you ready to go with alternatives, I mean, because  
8 the meeting is going to be next Tuesday, he's  
9 going -- he has -- he has -- well, proper prior  
10 preparation, so I was trying to help him out like I  
11 help a lot of people.

12 Q. One of those alternatives would have been  
13 suspending the issuance of the long bond.

14 Right?

15 MS. WILLIAMS: Objection.

16 A. It -- not necessarily would have been, but  
17 it may have come up. I don't recall it coming up.

18 I mean, I don't -- I don't recall him  
19 having 2 scenarios, but maybe he did. I don't know.

20 I just remember looking and seeing if it's  
21 feasible, because we were making so many changes,  
22 and, you know, I may have asked him, do you have an  
23 alternative scenario if the long bond is not there,  
24 or something like that.

25 I don't know. I don't recall saying it,

1 BY MR. SHOPE:

2 Q. So you're saying you just don't remember  
3 one way or the other whether or not the suspension of  
4 the long bond came up in your discussion with  
5 Mr. Matus of William Brothers?

6 A. I don't recall the discussion coming up.

7 But I wouldn't be surprised if I said  
8 things like, do you have an alt- -- what if -- what  
9 if we -- the -- what if the long bond is eliminated  
10 sometime in the next year, do you have an alternative  
11 for that. What if we go from quarterly to semiannual  
12 tens, 10-year securities.

13 And it was more like I'd say, well, what  
14 if Woody says, how about this. It was kind of like  
15 asking him questions trying to get him prepared for  
16 his boss to get ready for this meeting, you know.

17 Q. M-hm.

18 A. But I don't recall the context of this  
19 300- -- or 800-pound elephant.

20 Q. Well, the testimony obviously will speak  
21 for itself.

22 Now, were there any other inaccuracies  
23 that you noted --

24 A. Yeah.

25 Q. -- in exhibit 11?

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1 but I -- it just seems like --

2 BY MR. SHOPE:

3 Q. Well, that was the elephant in the room,  
4 wasn't it?

5 MS. WILLIAMS: Objection.

6 A. I don't think so.

7 BY MR. SHOPE:

8 Q. I thought -- didn't you refer to that as  
9 the elephant in the room earlier today in your  
10 deposition?

11 MS. WILLIAMS: Objection.

12 A. I don't recall my context.

13 BY MR. SHOPE:

14 Q. To suspending the long bonds.

15 A. Yeah, I know, but --

16 Q. This is an issue at the October 30 --  
17 there was an elephant in the room, as you say, at the  
18 October 30 meeting of the borrowing advisory  
19 committee.

20 MS. WILLIAMS: Objection.

21 I think this mischaracterizes his  
22 testimony.

23 A. I don't recall saying that. And we just  
24 went over the minutes, and it doesn't -- it's not  
25 included in there.

1 A. I don't know. All right.

2 The last paragraph on page 2 continues  
3 on -- I'm not quite -- I'm -- it's a long time ago,  
4 but I -- I remember answering the phone and asking  
5 Jill.

6 Then the next page says, I introduced  
7 myself to him at a press conference in 1996. And  
8 it's -- it -- this is something I have a recollection  
9 of, is, I walked over, and Jill and Roger were  
10 standing over -- point out exactly where they were  
11 standing.

12 They were standing by the side door. And  
13 Roger had done the press conference, so I think -- so  
14 that had to have been pre-Gensler. They were just  
15 standing there making small talk.

16 And I was Jill's deputy and just walked  
17 over and say, good job, Roger, or something like  
18 that. And he introduced me to -- Paul, this is Pete  
19 Davis, Pete Davis, Paul Malvey. And, hi.

20 And Roger says, he's one of the good guys.  
21 And I think I mentioned that earlier today, because  
22 Roger just -- Roger is a man of few words.

23 Q. M-hm.

24 A. And for him to say, one of the good guys,  
25 I remember saying, I wonder what he means by that,

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|---|--|
| <p>1 showed that Reuters -- an email at 9:55 AM showing an<br/>2 announcement from Reuters ostensibly with a timestamp<br/>3 of 9:57 reporting the decision to suspend the<br/>4 elimination of the long bond?<br/>5 MS. WILLIAMS: Objection.<br/>6 A. I mean, you showed me that earlier.<br/>7 Okay?<br/>8 And I saw that. I mean, you know, my mind<br/>9 is on the cusp of turning to oatmeal right now.<br/>10 MS. WILLIAMS: Exhibit 10?<br/>11 A. Yeah.<br/>12 I mean, I -- yes, I did, yeah.<br/>13 BY MR. SHOPE:<br/>14 Q. So in fact, Reuters was disseminating the<br/>15 information in advance of any supposed embargo.<br/>16 Correct?<br/>17 A. I don't know.<br/>18 MS. WILLIAMS: Objection.<br/>19 A. I just saw the email. I don't know<br/>20 whether Reuters -- I saw the email and I saw the<br/>21 discrepancy of time in the email, but that's all I<br/>22 know.<br/>23 Q. So that at least calls into question<br/>24 whether or not Mr. Davis and the Web site were the<br/>25 only instances of disclosure before 10 o'clock.</p> | <p>1 o'clock was unusually long?<br/>2 MS. WILLIAMS: Objection.<br/>3 BY MR. SHOPE:<br/>4 Q. Correct?<br/>5 A. It was different? I mean, it's usually --<br/>6 it was set as I've gone through by public affairs<br/>7 officer querying the press as to, is X amount of time<br/>8 sufficient.<br/>9 Q. Yeah.<br/>10 But I mean, historically, that's been 10<br/>11 or 15 minutes.<br/>12 Correct?<br/>13 A. Yes, 10 to 15 minutes, but, yes, yeah.<br/>14 Q. So 35 minutes was a significant -- it was<br/>15 a doubling in fact?<br/>16 A. It was an outlier.<br/>17 Q. Yeah.<br/>18 And you also mentioned that Mr. Fisher<br/>19 had -- in addition to participating in the<br/>20 question-and-answer session at the conclusion of the<br/>21 press conference that he conducted was making himself<br/>22 available to reporters for a further<br/>23 question-and-answer session back in his office.<br/>24 Correct?<br/>25 MS. WILLIAMS: Objection.</p>   |
| Page 327  | Page 329   |
| <p>1 Correct?<br/>2 MS. WILLIAMS: Objection.<br/>3 A. I'm sorry. I'm sorry.<br/>4 I thought --<br/>5 MR. SHOPE: Can I have the question<br/>6 re-read?<br/>7 (The reporter read the record as<br/>8 requested.)<br/>9 A. I mean, I don't -- to be honest with you,<br/>10 I don't know. I mean, you know, this is dated 2<br/>11 days -- this is a copy made 2 days later, and I see<br/>12 what it says, and, you know, I assume everybody deals<br/>13 with honest people, and that's -- and there are<br/>14 inconsistencies.<br/>15 BY MR. SHOPE:<br/>16 Q. M-hm. Now, you mentioned that at the time<br/>17 you thought that the lag in between the conclusion of<br/>18 the press conference --<br/>19 A. Yeah.<br/>20 Q. -- at approximately 10:25 --<br/>21 A. 9:25.<br/>22 Q. -- 9:25.<br/>23 Excuse me.<br/>24 A. Right.<br/>25 Q. -- and the stated embargo time of 10</p>   | <p>1 A. I'm less sure about that, but that's my<br/>2 recollection. I mean, if -- I'm less sure about<br/>3 that. It seemed that there was going to be a Q and A<br/>4 thing in Peter's office about an hour after the<br/>5 embargo ended. And that would explain these 2 press<br/>6 people entering the building at 10:30 or 11.<br/>7 BY MR. SHOPE:<br/>8 Q. Okay. And Mr. Fisher had caused the press<br/>9 conference to be held not in the ordinary secretary<br/>10 conference room but in the diplomatic conference room<br/>11 that had the seal of the Treasury behind him.<br/>12 Right?<br/>13 A. I don't think --<br/>14 MS. WILLIAMS: Objection.<br/>15 THE WITNESS: Okay.<br/>16 A. I don't think he had caused that. I think<br/>17 that we just switched with -- Paul O'Neill created a<br/>18 little bit more of a television-friendly room in<br/>19 there, and it wasn't just Peter Fisher, but you're<br/>20 going to be on camera, people started using that<br/>21 room. I mean, it was so it's set up there more or<br/>22 less permanently as a pressroom and studio, whereas<br/>23 the other one was more of an ad hoc thing.<br/>24 BY MR. SHOPE:<br/>25 Q. Well, how long had Mr. O'Neill been using</p> |

## **Exhibit J**

### **Deposition of Steven Nothern and Cited Exhibit (January 30-31, 2007)**

Steven E. Northern

Boston, MA

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Page 1

1 Volume: I  
2 Pages: 1-221  
3 Exhibits: 1-10  
4

5 UNITED STATES DISTRICT COURT  
6 DISTRICT OF MASSACHUSETTS  
7 (Boston Division)

8 Civil Action No. 05-CV-10983 (NMG)

9 - - - - -

10 UNITED STATES SECURITIES AND EXCHANGE  
11 COMMISSION,  
12 Plaintiff,

13 ( v.

14 STEVEN E. NOTHERN,  
15 Defendant.

16 - - - - -

17 Deposition of Steven E. Nothern

18 January 30, 2007

19 9:19 a.m. - 4:00 p.m.

20 Securities and Exchange Commission

21 33 Arch Street

22 Boston, Massachusetts

23

24 Reporter: Daria L. Romano, RPR/CRR

25

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Boston, MA

| Page 2  | Page 4   |
|---|--|
| <p>1 APPEARANCES:</p> <p>2 UNITED STATES SECURITIES AND</p> <p>3 EXCHANGE COMMISSION</p> <p>4 (by Erica Y. Williams,</p> <p>5 Assistant Chief Litigation Counsel;</p> <p>6 John J. Rossetti, Jr., Senior Counsel</p> <p>7 Division of Enforcement)</p> <p>8 100 F Street, N.E.</p> <p>9 Washington, D.C. 20549-4010</p> <p>10 (202) 551-4450</p> <p>11 williamse@sec.gov</p> <p>12 rossettij@sec.gov</p> <p>13 for the Plaintiff.</p> <p>14</p> <p>15 FOLEY HOAG, LLP</p> <p>16 (by Nicholas Theodorou, Esq. and</p> <p>17 John Shope, Esq.)</p> <p>18 155 Seaport Boulevard</p> <p>19 Boston, Massachusetts 02210</p> <p>20 (617) 832-3061</p> <p>21 jtheodorou@foleyhoag.com</p> <p>22 jshope@foleyhoag.com</p> <p>23 for the Defendant.</p> <p>24</p> <p>25 ALSO PRESENT: Ian McWilliams, Videographer</p> | <p>1 PROCEEDINGS</p> <p>2</p> <p>3 THE VIDEOGRAPHER: Here begins</p> <p>4 videotape number one in the deposition of Steven</p> <p>5 Nothorn in the matter of the United States</p> <p>6 Securities Exchange Commission versus Steven</p> <p>7 Nothorn in the United States District Court for</p> <p>8 the District of Massachusetts, Civil Action</p> <p>9 05-CV-10983 (NMG).</p> <p>10 Today's date is January 30th, year</p> <p>11 2007. The time on the video monitor is 9:19</p> <p>12 a.m.</p> <p>13 The video operator today is Ian</p> <p>14 McWilliams of New England Trial Services</p> <p>15 contracted by Jones Reporting Company.</p> <p>16 This deposition is taking place at the</p> <p>17 offices of the SEC, 33 Arch Street, Boston,</p> <p>18 Massachusetts.</p> <p>19 Counsel, please voice identify</p> <p>20 yourselves and state whom you represent.</p> <p>21 MS. WILLIAMS: Erica Williams,</p> <p>22 United States Securities and Exchange</p> <p>23 Commission.</p> <p>24 MR. ROSSETTI: John Rossetti for</p> <p>25 the plaintiff, US Securities and Exchange</p> |
| Page 3  | Page 5   |
| <p>1 INDEX</p> <p>2 Deposition of: Page</p> <p>3 STEVEN E. NOTHERN</p> <p>4 By Ms. Williams 6</p> <p>5</p> <p>6</p> <p>7 EXHIBITS</p> <p>8 No. Page</p> <p>9 1 Notice of deposition 8</p> <p>10 2 Transcript 9</p> <p>11 3 Statement of Guidelines With Respect</p> <p>12 to Receipt and Use of Material</p> <p>13 Nonpublic Inside Information 69</p> <p>14 4 Floor plan 81</p> <p>15 5 David Capital Investment Ideas 111</p> <p>16 6 E mail 131</p> <p>17 7 E mail 135</p> <p>18 8 Treasury News document 148</p> <p>19 9 Answers to interrogatories 166</p> <p>20 10 Mass. Financial Services Department</p> <p>21 Report from 10/31/2001 to 10/31/2001 182</p> <p>22</p> <p>23 *Original exhibits returned to Ms. Williams</p> <p>24</p> <p>25</p>   | <p>1 Commission.</p> <p>2 MR. THEODOROU: Nicholas Theodorou</p> <p>3 for the defendant, Steven Nothorn.</p> <p>4 MR. SHOPE: John Shope for the</p> <p>5 defendant, Steven Nothorn.</p> <p>6 THE VIDEOGRAPHER: The court</p> <p>7 reporter today is Daria Romano of Jones</p> <p>8 Reporting Company.</p> <p>9 Would the reporter please swear in the</p> <p>10 witness.</p> <p>11</p> <p>12 STEVEN E. NOTHERN DULY SWORN</p> <p>13</p> <p>14 THE VIDEOGRAPHER: Please begin.</p> <p>15 MR. THEODOROU: Before we start, we</p> <p>16 will talk about the stipulations.</p> <p>17 MS. WILLIAMS: Absolutely. The</p> <p>18 same stipulations that we've had in the other</p> <p>19 depositions, all objections, except as to the</p> <p>20 form of the question, are reserved, including</p> <p>21 motions to strike.</p> <p>22 MR. THEODOROU: Reserved until the</p> <p>23 time of trial.</p> <p>24 MS. WILLIAMS: Yes.</p> <p>25 MR. THEODOROU: Fine.</p>  |

2 (Pages 2 to 5)

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| <p style="text-align: right;">Page 6</p> <p>1 MR. SHOPE: And the witness will<br/>2 read and sign the transcript noting any errata.<br/>3 And the signature before a notary is waived.<br/>4 MS. WILLIAMS: Absolutely.<br/>5 MR. SHOPE: Okay.<br/>6<br/>7 DIRECT EXAMINATION<br/>8 BY MS. WILLIAMS:<br/>9 Q. Mr. Nothern, could you please state<br/>10 your full name?<br/>11 A. Steven E. Nothern.<br/>12 Q. What's the E stand for?<br/>13 A. Eric.<br/>14 Q. What's your date of birth?<br/>15 A. April 13, 1956.<br/>16 Q. And what is your current home address?<br/>17 A. 20 Collier Ave. in Scituate,<br/>18 Massachusetts.<br/>19 Q. Do you have an E mail address?<br/>20 A. I have two E mail addresses.<br/>21 Q. Could you tell me what both of those<br/>22 are?<br/>23 A. They both start snothern,<br/>24 S-N-O-T-H-E-R-N, one is @comcast.net, the other<br/>25 is @satuit.com. And Satuit is spelled</p>   | <p style="text-align: right;">Page 8</p> <p>1 If you need to take a break at any<br/>2 time, let me know. This isn't to be more<br/>3 painful than it has to be. So unless a question<br/>4 is pending, we will take a break.<br/>5 And if you have any questions or you<br/>6 don't understand my question, let me know. If<br/>7 you don't let me know, I'll assume that you<br/>8 heard my question and that you understood it.<br/>9 Do you have any questions about the<br/>10 process?<br/>11 A. No.<br/>12 Q. Okay.<br/>13 MS. WILLIAMS: I'd like to have<br/>14 this marked as Exhibit 1.<br/>15 (Exhibit 1 marked<br/>16 for identification)<br/>17 BY MS. WILLIAMS:<br/>18 Q. Have you seen this document before,<br/>19 sir?<br/>20 A. I don't believe so.<br/>21 Q. What is it?<br/>22 A. It's labeled a Notice of Deposition.<br/>23 Q. And I submit that this is a notice for<br/>24 your deposition here today.<br/>25 Are you appearing at this deposition</p> |
| <p style="text-align: right;">Page 7</p> <p>1 S-A-T-U-I-T.<br/>2 Q. Have you ever been deposed before,<br/>3 Mr. Nothern?<br/>4 A. I gave testimony before the SEC in<br/>5 2001.<br/>6 Q. Except for the SEC testimony that you<br/>7 gave in our pre-lawsuit investigation, have you<br/>8 ever been deposed in any other matter?<br/>9 A. No.<br/>10 Q. I'm going to first start by describing<br/>11 the deposition process.<br/>12 Your testimony is being taken under<br/>13 oath and subject to penalty of perjury.<br/>14 It's being transcribed, so all of your<br/>15 responses must be oral, no head nodding.<br/>16 The court reporter can only take down<br/>17 one person speaking at a time, so I'm going to<br/>18 try to give you an opportunity to finish<br/>19 answering the question before I ask a subsequent<br/>20 question so that we're not both talking over one<br/>21 another.<br/>22 Likewise, your counsel may have<br/>23 objections, so after I ask a question, it might<br/>24 be a good idea to pause to allow your counsel to<br/>25 insert an objection before you respond.</p> | <p style="text-align: right;">Page 9</p> <p>1 pursuant to this notice?<br/>2 A. I assume so, yeah.<br/>3 Q. You mentioned that you'd given some<br/>4 testimony to the SEC.<br/>5 Do you know when you provided that<br/>6 investigative testimony?<br/>7 A. Late 2001, early December.<br/>8 Q. And was that testimony also sworn in<br/>9 under oath?<br/>10 A. Yes.<br/>11 Q. Did you review the testimony prior to<br/>12 this deposition today?<br/>13 A. Yes.<br/>14 MS. WILLIAMS: I'd like to have<br/>15 this marked as Exhibit 2.<br/>16 (Exhibit 2 marked<br/>17 for identification)<br/>18 BY MS. WILLIAMS:<br/>19 Q. Have you seen this document before?<br/>20 A. Yes.<br/>21 Q. What is it?<br/>22 A. I believe it's a transcript of the<br/>23 testimony I gave in early December 2001.<br/>24 Q. And what was the date of that<br/>25 testimony?</p>   |

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| <p style="text-align: right;">Page 10</p> <p>1 A. This document is dated December 4,<br/>2 2001.</p> <p>3 Q. And do you agree that that was a<br/>4 correct date, that your testimony was<br/>5 December 4, 2001?</p> <p>6 A. Yes. I have no reason to believe<br/>7 otherwise.</p> <p>8 Q. I just want to note the Bates number<br/>9 on this document is SECNOTH00117214 to 00117288.<br/>10 Would you agree, sir, that the events<br/>11 that gave rise to the SEC's complaint in this<br/>12 case occurred around October 31st of 2001?</p> <p>13 A. Yes.</p> <p>14 MR. THEODOROU: Objection.<br/>15 BY MS. WILLIAMS:</p> <p>16 Q. So this testimony was taken a little<br/>17 over a month after that, after October 31, 2001?</p> <p>18 MR. THEODOROU: Objection.</p> <p>19 A. Yes.</p> <p>20 Q. Setting aside any typographical errors<br/>21 you might have noticed in this testimony, is<br/>22 there anything else that you notice in the<br/>23 testimony that you didn't believe was correct?</p> <p>24 MR. THEODOROU: Objection.<br/>25 A. Some of the text is garbled and</p>  | <p style="text-align: right;">Page 12</p> <p>1 Q. Did you meet with your attorneys prior<br/>2 to this deposition?</p> <p>3 A. Yes.</p> <p>4 Q. Was there anyone present at that<br/>5 meeting other than your attorneys or employees<br/>6 from Foley Hoag?</p> <p>7 A. No.</p> <p>8 Q. Did you ever meet with attorneys from<br/>9 the US Attorney's Office in connection with any<br/>10 investigation related to trading in the 30-year<br/>11 bond?</p> <p>12 A. I met with attorneys, I guess from the<br/>13 Justice Department, Southern District New York.</p> <p>14 Q. Do you recall who you met with?</p> <p>15 A. I don't recall the names, no.</p> <p>16 Q. When was this meeting?</p> <p>17 A. I believe some time in 2002, perhaps<br/>18 summer 2002. I don't remember exactly when.</p> <p>19 Q. Do you recall how many attorneys from<br/>20 the Southern District of New York were present<br/>21 at the meeting?</p> <p>22 A. Yes.</p> <p>23 Q. How many?</p> <p>24 A. I believe one.</p> <p>25 Q. Was it a male or female?</p> |
| <p style="text-align: right;">Page 11</p> <p>1 clearly, you know, mistranscribed.</p> <p>2 Q. Is there anything in particular that<br/>3 you remember was mistranscribed?</p> <p>4 A. I'd have to go through and dig it out,<br/>5 but there's some sections where clearly the word<br/>6 as transcribed is nonsensical or out of context<br/>7 or just doesn't seem to make any sense.</p> <p>8 Q. Okay.</p> <p>9 A. I think I remember one passage where<br/>10 we were discussing people that might have<br/>11 attended a meeting, and one is described as an<br/>12 excellent saxophone player, or something of that<br/>13 sort, whereas I think he was an ex-Goldman Sachs<br/>14 employee. So it got transcribed as a saxophone<br/>15 player. So there are some garbled passages of<br/>16 that sort.</p> <p>17 Q. Okay. If you recall any other<br/>18 passages at any time, please let me know, but<br/>19 I'm going to move on.</p> <p>20 Have you ever testified at a trial?</p> <p>21 A. No.</p> <p>22 Q. Do you have any medical conditions<br/>23 that might affect your ability to testify<br/>24 truthfully here today?</p> <p>25 A. No.</p> | <p style="text-align: right;">Page 13</p> <p>1 A. It was a male.</p> <p>2 Q. Were there any attorneys from the SEC<br/>3 present during this meeting?</p> <p>4 A. Not that I recall.</p> <p>5 Q. What did you discuss during this<br/>6 meeting?</p> <p>7 A. We discussed the events surrounding<br/>8 the treasury refunding announcement of<br/>9 October 31, 2001.</p> <p>10 Q. Except for that meeting, did you have<br/>11 any other meetings with anyone from the Southern<br/>12 District of New York?</p> <p>13 A. No. There was a second person in<br/>14 attendance, but I don't think he was an employee<br/>15 of the Justice Department.</p> <p>16 Q. Did you take any notes during that<br/>17 meeting?</p> <p>18 A. No.</p> <p>19 Q. Besides your counsel, did you have any<br/>20 discussions with anyone else about your<br/>21 appearance here today?</p> <p>22 A. Outside of counsel, my wife. So yes.</p> <p>23 Q. Did you discuss with anyone what your<br/>24 testimony would be here today?</p> <p>25 A. No.</p>             |

4 (Pages 10 to 13)

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|--|---|
| <p>1 Q. Could you please tell me your<br/>2 education history since high school?<br/>3 A. I attended college at Middlebury<br/>4 College in Vermont, graduated in '78.<br/>5 Q. What was your -- did you obtain a<br/>6 degree?<br/>7 A. It was undergraduate, history.<br/>8 Q. Bachelor of arts in history?<br/>9 A. I believe so, yeah.<br/>10 I attended Boston University and<br/>11 completed my MBA at Boston University.<br/>12 Q. What year did you complete your MBA?<br/>13 A. I believe 1988, give or take.<br/>14 Q. Are you currently employed?<br/>15 A. Yes.<br/>16 Q. Where are you employed?<br/>17 A. I'm employed with Satuit Technologies,<br/>18 S-A-T-U-I-T, Technologies.<br/>19 Q. What is Satuit Technologies?<br/>20 A. It's a software development and sales<br/>21 company.<br/>22 Q. Where is it located?<br/>23 A. It's located in Norwell,<br/>24 Massachusetts. We have offices also in London,<br/>25 the UK.</p>  | <p>1 on operations, make sure things are moving<br/>2 forward and people in the organization are<br/>3 staying focused on our goals and they're being<br/>4 held accountable to responsibilities that they<br/>5 have in their areas.<br/>6 Q. When was Satuit Technologies formed?<br/>7 A. My wife founded the company in 1994.<br/>8 Q. When did you begin to work for Satuit<br/>9 Technologies?<br/>10 A. In a formal way, in terms of being on<br/>11 the payroll, I put myself on the payroll some<br/>12 time last year.<br/>13 Q. So in 2005 -- 2006?<br/>14 A. Last year.<br/>15 Q. 2006?<br/>16 A. 2006, some time in the spring. So<br/>17 it's maybe been a year, a little less than a<br/>18 year. But I've been involved in the company<br/>19 from the start. I'm now working about three<br/>20 days a week.<br/>21 Q. Prior to the spring of 2006 when you<br/>22 put yourself on the payroll, how were you<br/>23 involved with the company?<br/>24 A. Performing essentially those<br/>25 responsibilities.</p> |
| Page 15  | Page 17   |
| <p>1 Q. So your office is in Norwell,<br/>2 Massachusetts?<br/>3 A. Yes.<br/>4 Q. Would you tell me the office address?<br/>5 A. 80 Washington Square. It's unit M, as<br/>6 in Mary, 50, 5-0.<br/>7 Q. What's your job title?<br/>8 A. I am -- I'm a director. I'm acting<br/>9 CFO and chief operating officer.<br/>10 Q. Could you tell me what your job<br/>11 responsibilities are?<br/>12 A. Well, responsibilities as director are<br/>13 very far ranging, so it's a supervisory -- it's<br/>14 a firm that I own with my wife.<br/>15 Q. Okay.<br/>16 A. As CFO, I take responsibility for<br/>17 obviously the financial matters, the<br/>18 bookkeeping, the billing, filing of regulatory<br/>19 tax statements. So generally legal and<br/>20 financial matters and HR matters, sort of<br/>21 infrastructure, physical infrastructure matters,<br/>22 like the office space, finding new office space,<br/>23 renovating existing office space.<br/>24 And as operating officer it's pretty<br/>25 broad ranging as well. Basically to keep an eye</p> | <p>1 As the company grows, it becomes more<br/>2 and more of a full-time job.<br/>3 Q. Is there a board of directors of the<br/>4 company?<br/>5 A. Yes.<br/>6 Q. Are you on that board?<br/>7 A. Yes.<br/>8 Q. How long have you been on the board?<br/>9 A. I'm not sure. Possibly from the<br/>10 start, which would be 1994.<br/>11 Q. How many employees does Satuit<br/>12 Technology have?<br/>13 A. Including our fully owned sub in the<br/>14 UK, I think it's 23 people, give or take one or<br/>15 two. I think we're 20 to 21 in the UK, and<br/>16 currently we're two in the UK. We're adding one<br/>17 over there in March, so in about a month.<br/>18 Q. What is your -- I'm trying to find out<br/>19 what your income is from Satuit. Do you have a<br/>20 salary?<br/>21 MR. THEODOROU: Objection.<br/>22 A. Yes, I have a salary.<br/>23 Q. How much do you make?<br/>24 A. Off the top of my head, I think it's<br/>25 in the range of -- I don't know exactly off the</p>                                  |

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| Page 18   | Page 20  |
|---|--|
| <p>1 top of my head. I think it's in a range of 50<br/>2 to \$60,000.<br/>3 Q. A year?<br/>4 A. Yes.<br/>5 Q. What's the name of the company in the<br/>6 UK? You said there's a subsidiary.<br/>7 A. Yes. It's Satuit Technologies, LTD.<br/>8 Q. Is Satuit Technologies a public<br/>9 company?<br/>10 A. No.<br/>11 Q. Do you know who the other members of<br/>12 the board of directors of Satuit are?<br/>13 A. Yes.<br/>14 Q. Could you name them for me?<br/>15 A. Karen Maguire, M-A-G-U-I-R-E, Joshua<br/>16 Weiss, W-E-I-S-S, and Njal Larson, L-A-R-S-O-N.<br/>17 Q. Does the company have any investors?<br/>18 MR. THEODOROU: Objection.<br/>19 A. The only outside investor is me, if I<br/>20 can be considered an outside investor. I was an<br/>21 original investor before taking a more active<br/>22 role as I am now.<br/>23 Q. Where were you employed prior to the<br/>24 spring of 2006 when you were put on the payroll<br/>25 at Satuit?</p>   | <p>1 Q. Were you given a reason?<br/>2 A. Eventually, yes.<br/>3 Q. What was the reason that you were<br/>4 given?<br/>5 A. There were two or three reasons they<br/>6 gave.<br/>7 First you have to understand that I<br/>8 indicated to them that I thought the charges<br/>9 that were brought by the SEC had no merit, and I<br/>10 was going to fight them.<br/>11 So one reason they gave me was that<br/>12 fighting the SEC was going to take up too much<br/>13 of my time and would detract from my portfolio<br/>14 responsibilities.<br/>15 I think secondly they questioned my<br/>16 judgment in transactions, trades I did<br/>17 October 31 of 2001.<br/>18 And thirdly, I think they felt I<br/>19 should have been more forthright, more<br/>20 forthcoming.<br/>21 Q. When you say "more forthcoming," more<br/>22 forthcoming about what?<br/>23 A. About the incidents surrounding trades<br/>24 we did in October 31 of 2001.<br/>25 Q. Is there anything specific they felt</p> |
| Page 19   | Page 21  |
| <p>1 A. My prior employment was with MFS,<br/>2 investment management, here in Boston.<br/>3 Q. And MFS stands for what?<br/>4 A. MFS at one point stood for<br/>5 Massachusetts Financial Services Company. I<br/>6 think at one point they just actually went with<br/>7 the name MFS, my understanding.<br/>8 Q. Okay. So during this deposition, if I<br/>9 refer to the company as MFS, no matter what time<br/>10 period, will you understand what I'm talking<br/>11 about?<br/>12 A. Yes.<br/>13 Q. Okay. When did you first go to work<br/>14 at MFS?<br/>15 A. I started at MFS in, I believe, the<br/>16 spring of 1986, April, May, around that period.<br/>17 Q. When did you stop working for MFS?<br/>18 A. March of 2002.<br/>19 Q. Why did you stop working at MFS?<br/>20 A. They fired me.<br/>21 Q. Were you fired for cause?<br/>22 MR. THEODOROU: Objection.<br/>23 A. It hasn't been put to me that way. In<br/>24 Massachusetts you're an employee at will. They<br/>25 don't actually have to give you reason.</p> | <p>1 you weren't forthcoming about?<br/>2 MR. THEODOROU: Objection.<br/>3 A. No. We didn't discuss that.<br/>4 Q. Who gave you these reasons as to why<br/>5 you were fired?<br/>6 A. I believe Eric Burns.<br/>7 Q. What was Mr. Burns's job title at MFS?<br/>8 A. I don't know.<br/>9 Q. Do you know what department he worked<br/>10 in?<br/>11 A. He was, I think, a lawyer and an<br/>12 accountant by training. I think his<br/>13 responsibilities were primarily with the Human<br/>14 Resource Department. So he may have been part<br/>15 of the Legal Department or the HR Department. I<br/>16 couldn't tell you.<br/>17 Q. Between the time that you were fired<br/>18 by MFS, which you said was March of 2002, and<br/>19 the time you went to work for Satuit in the<br/>20 spring of 2006, did you have any employment?<br/>21 A. In the sense of getting a paycheck?<br/>22 Q. Yes.<br/>23 A. No.<br/>24 Q. What did you do for income during that<br/>25 time?</p>                 |

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| <p>1 A. I had no income other than investment<br/>2 income from my savings.<br/>3 Q. Did you take any steps to seek<br/>4 employment during that time period?<br/>5 A. No.<br/>6 Q. I'm going to go back to MFS later, but<br/>7 could you tell me where you worked prior to May,<br/>8 or I think you said spring of 1986 when you<br/>9 joined MFS, where were you employed prior to<br/>10 that?<br/>11 A. I was employed with Merrill Lynch<br/>12 Pierce Fenner &amp; Smith.<br/>13 Q. When did you first go to work for<br/>14 Merrill Lynch Pierce Fenner &amp; Smith?<br/>15 A. I believe 1981.<br/>16 Q. What was your job title there?<br/>17 A. Initially I came in as a trainee<br/>18 account executive I believe is what they called<br/>19 it then.<br/>20 Q. What were your job responsibilities as<br/>21 a trainee account executive?<br/>22 A. I was being groomed to be a salesman.<br/>23 Q. When you say "a salesman," could you<br/>24 tell me a salesman of what?<br/>25 A. Initially I was hired in a department</p>  | <p>1 Q. As an account executive at Merrill<br/>2 Lynch, what were your daily responsibilities?<br/>3 A. Excuse me?<br/>4 Q. As an account executive, what were<br/>5 your responsibilities on a daily basis?<br/>6 A. My responsibilities were to develop<br/>7 the business, to find new clients, and to<br/>8 service those accounts, to handle their<br/>9 investment and transaction needs, their<br/>10 informational needs, deliver research.<br/>11 Q. How long did you work for Merrill<br/>12 Lynch?<br/>13 A. '82, '83, '84. About four years, I<br/>14 believe.<br/>15 Q. And were you an account executive<br/>16 that -- you said eventually you became an<br/>17 account executive. Did you have any other job<br/>18 titles while you were there?<br/>19 A. Not that I recall.<br/>20 Q. Why did you leave Merrill Lynch?<br/>21 A. To come back to your prior question,<br/>22 they may have not always used the term account<br/>23 executive. I think over time they've used<br/>24 different names for that basic function. But<br/>25 whether it was always account executive that was</p> |
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| <p>1 that handled futures, so we were to find clients<br/>2 that would need the services of Merrill Lynch to<br/>3 transact commodities futures contracts.<br/>4 I was in a group that was relatively<br/>5 newly formed to grow the what was then called<br/>6 the financial futures business at the time,<br/>7 primarily focused on interest rates futures<br/>8 contracts. The business was just developing at<br/>9 the time.<br/>10 Q. Was there a name for this group that<br/>11 you were part of? You said it was a relatively<br/>12 newly formed group.<br/>13 A. It was the Financial Futures Group, I<br/>14 believe.<br/>15 Q. Were you ever promoted from this<br/>16 position that you held initially, which was<br/>17 trainee account executive?<br/>18 A. I became an account executive.<br/>19 And at some point I was moved to a<br/>20 different group which was on a different floor,<br/>21 it was an institutional equity sales office, and<br/>22 I was part of a small group that was to work<br/>23 with the existing institutional equity accounts<br/>24 to handle their needs with the new equity<br/>25 futures contracts.</p> | <p>1 my title, I don't recall at all.<br/>2 Q. So why did you leave Merrill Lynch?<br/>3 A. We, my wife and I, moved from New York<br/>4 to Massachusetts. The primary motivation for<br/>5 moving was my wife's mother's health was not<br/>6 good, so we moved to be closer to her.<br/>7 Q. Where did you work before you went to<br/>8 Merrill Lynch?<br/>9 A. Before Merrill Lynch and before we<br/>10 moved to New York, we lived in Middlebury,<br/>11 Vermont.<br/>12 And after graduating from college, I<br/>13 held a job basically working in a restaurant, I<br/>14 think, as a -- working as a waiter, maybe some<br/>15 bartending.<br/>16 My wife and I were also developing<br/>17 real estate, so we worked on homes. We bought a<br/>18 dilapidated old house in Middlebury.<br/>19 Q. You said prior to that you were in<br/>20 college; is that right?<br/>21 A. Yes.<br/>22 Q. Did you work while you were pursuing<br/>23 your MBA?<br/>24 A. Yes. I did, I think, a good half of<br/>25 the MBA full time, and then I started at MFS and</p>  |

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| <p>1 completed it while I was working at MFS.</p> <p>2 Q. Have you ever earned any securities</p> <p>3 licenses?</p> <p>4 A. Yes.</p> <p>5 Q. Could you tell me which ones?</p> <p>6 A. I believe three, but I couldn't</p> <p>7 remember two. Series 7 and the commodity</p> <p>8 registration, and the number is slipping me.</p> <p>9 Q. 63?</p> <p>10 A. I don't believe that's the commodity.</p> <p>11 Isn't that the state registration?</p> <p>12 Q. Did you ever receive a Series 63?</p> <p>13 A. Yes.</p> <p>14 Q. And you believe there's one</p> <p>15 additional -- the commodities registration?</p> <p>16 A. The commodities registration.</p> <p>17 Q. When did you earn your Series 7?</p> <p>18 A. Within the first early period I worked</p> <p>19 at Merrill Lynch.</p> <p>20 Q. So some time around 1981?</p> <p>21 A. Yes.</p> <p>22 Q. What about the Series 63?</p> <p>23 A. I believe I completed them around the</p> <p>24 same time.</p> <p>25 Q. And the commodities registration?</p>  | <p>1 Q. When you worked for MFS, where was</p> <p>2 your office located?</p> <p>3 A. We worked at two different locations.</p> <p>4 Q. And could you tell me where those</p> <p>5 were?</p> <p>6 A. They were both in the Back Bay.</p> <p>7 MR. THEODOROU: What time period?</p> <p>8 When he first started or --</p> <p>9 MS. WILLIAMS: Well, it's not clear</p> <p>10 to me now if there were two locations at the</p> <p>11 same time.</p> <p>12 BY MS. WILLIAMS:</p> <p>13 Q. Were the two locations at the same</p> <p>14 time, covered the same time period?</p> <p>15 A. We moved locations in 1988. So</p> <p>16 initially we were at, I believe the address was</p> <p>17 200 Berkeley, the old Hancock building with the</p> <p>18 light tower on it.</p> <p>19 Q. In Boston, Massachusetts?</p> <p>20 A. In the Back Bay, yes.</p> <p>21 Q. And where did you move to in 1988?</p> <p>22 A. MFS relocated the office to 500</p> <p>23 Boylston Street.</p> <p>24 Q. What was your job title when you were</p> <p>25 first hired by MFS?</p>  |
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| <p>1 A. I believe I completed all three as</p> <p>2 part of my trainee program. When I started at</p> <p>3 Merrill Lynch, they immediately had us hit the</p> <p>4 books.</p> <p>5 Q. Were you required to earn these</p> <p>6 licenses as a result of your employment at</p> <p>7 Merrill Lynch?</p> <p>8 A. It was a requirement. For dealing</p> <p>9 with the public, you had to have these</p> <p>10 registrations to be a salesperson.</p> <p>11 Q. Are any of the registrations, are any</p> <p>12 of them still current?</p> <p>13 A. No.</p> <p>14 Q. Do you know when they lapsed?</p> <p>15 A. I don't.</p> <p>16 Q. Was it some time after you left MFS?</p> <p>17 A. Yes. One may have lapsed after I left</p> <p>18 Merrill Lynch. I'm not sure when they lapsed.</p> <p>19 They lapse unless you work for a</p> <p>20 member of one of the exchanges, I believe, and</p> <p>21 they have to renew it for you.</p> <p>22 Q. We've been talking about MFS, but</p> <p>23 could you tell me what MFS is?</p> <p>24 A. MFS is an investment management</p> <p>25 company.</p> | <p>1 A. I didn't have a job title.</p> <p>2 Q. What were your job responsibilities?</p> <p>3 A. I was working as a junior portfolio</p> <p>4 manager. Essentially a portfolio manager in</p> <p>5 training. I was brought in to be a portfolio</p> <p>6 manager, but I wasn't given that title</p> <p>7 immediately.</p> <p>8 Q. What did you do as a junior portfolio</p> <p>9 manager?</p> <p>10 A. I assisted in portfolio</p> <p>11 responsibilities.</p> <p>12 Q. What were those responsibilities?</p> <p>13 A. Developing strategy, executing the</p> <p>14 strategy in the portfolios, monitoring portfolio</p> <p>15 risks and exposures, monies coming in, monies</p> <p>16 going out of the portfolios, representing our</p> <p>17 portfolio management activities to other</p> <p>18 interested parties such as the board of</p> <p>19 directors or to brokers or wholesalers for</p> <p>20 marketing purposes.</p> <p>21 I was conducting fundamental research,</p> <p>22 developing market views, opinions on how the</p> <p>23 portfolios should be structured.</p> <p>24 Q. As a junior portfolio manager, did you</p> <p>25 place any orders to trade securities?</p> |

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| <p>1 A. Yes.</p> <p>2 Q. And how long were you a junior</p> <p>3 portfolio manager?</p> <p>4 A. I don't recall.</p> <p>5 Q. Did you ever take on any other job</p> <p>6 responsibility at MFS?</p> <p>7 A. Other than?</p> <p>8 Q. Junior portfolio manager.</p> <p>9 A. Yes.</p> <p>10 Q. What other responsibilities?</p> <p>11 A. At some point I was made a portfolio</p> <p>12 manager and given a title, a title of assistant</p> <p>13 vice president.</p> <p>14 Q. And do you recall approximately when</p> <p>15 that was?</p> <p>16 A. No, I don't.</p> <p>17 Q. Were you ever given any other titles</p> <p>18 while you worked at MFS?</p> <p>19 A. Yes. I was eventually made a senior</p> <p>20 vice president.</p> <p>21 Q. Do you know when you became senior</p> <p>22 vice president?</p> <p>23 A. I don't recall.</p> <p>24 Q. Do you know what your job title was in</p> <p>25 October of 2001?</p>   | <p>1 better than -- GSS which was the acronym for an</p> <p>2 annuity, government securities portfolio.</p> <p>3 GSV, which is the acronym for a second</p> <p>4 government securities portfolio that was sold as</p> <p>5 an annuity.</p> <p>6 I managed an institutional portfolio</p> <p>7 for a publicly-traded corporation.</p> <p>8 And I also managed as lead portfolio</p> <p>9 manager two closed-end mutual fund portfolios,</p> <p>10 one which went by the acronym of MIN, which was</p> <p>11 Intermediate Income Trust, and the other went by</p> <p>12 the acronym of MGF, which I believe was</p> <p>13 Government Markets Income Trust.</p> <p>14 Q. Are those all of the portfolios you</p> <p>15 managed in October of 2001?</p> <p>16 A. As I recall, those are the ones that I</p> <p>17 was the named portfolio manager on.</p> <p>18 Q. Are you familiar with a portfolio that</p> <p>19 went by the acronym MMT?</p> <p>20 A. Yes.</p> <p>21 Q. What is that? What was MMT?</p> <p>22 A. MMT is an acronym for Multi Market</p> <p>23 Income Trust.</p> <p>24 Q. Did you have any responsibility for</p> <p>25 managing that portfolio?</p> |
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| <p>1 A. I was a portfolio manager and senior</p> <p>2 vice president of the company.</p> <p>3 Q. As senior vice president and portfolio</p> <p>4 manager, how did your job responsibilities</p> <p>5 compare to when you were a junior portfolio</p> <p>6 manager?</p> <p>7 A. The primary difference is that I was</p> <p>8 named as portfolio manager officially on</p> <p>9 different portfolios as a portfolio manager.</p> <p>10 As a junior portfolio manager I was</p> <p>11 working on portfolios where another person, my</p> <p>12 supervisor, was the named responsible party for</p> <p>13 the portfolios.</p> <p>14 Q. Other than that, were there any other</p> <p>15 additional responsibilities you had as a</p> <p>16 portfolio manager and senior vice president?</p> <p>17 A. No.</p> <p>18 Q. How many portfolios did you manage in</p> <p>19 October of 2001?</p> <p>20 A. I managed -- I have to try to</p> <p>21 remember.</p> <p>22 Q. If you want to name them, that's fine.</p> <p>23 A. I managed the Government Securities</p> <p>24 Fund.</p> <p>25 I managed -- and I know the acronyms</p> | <p>1 A. I believe, now that you mention it,</p> <p>2 that I was lead portfolio manager. I think I</p> <p>3 had been made lead portfolio for that -- lead</p> <p>4 portfolio manager for that fund in 2001 some</p> <p>5 time.</p> <p>6 Q. Prior to October 2001?</p> <p>7 A. Yes.</p> <p>8 Q. If we could go through those funds,</p> <p>9 could you tell me what percentage of the funds</p> <p>10 in October 2001, if any, were invested in</p> <p>11 Treasury's securities?</p> <p>12 MR. THEODOROU: Objection.</p> <p>13 A. As a percentage of the portfolio</p> <p>14 allocation? I don't understand your question.</p> <p>15 I'm sorry.</p> <p>16 Q. Let me rephrase that question.</p> <p>17 Were any of these funds, did any of</p> <p>18 them have any investment in Treasury securities?</p> <p>19 A. Yes. They all did.</p> <p>20 Q. Were the funds open-ended? Except</p> <p>21 these two you mentioned were close-ended, the</p> <p>22 MIN and MGF, were the other funds open-ended?</p> <p>23 A. MMT was also a closed-end fund.</p> <p>24 The separately-managed portfolio for</p> <p>25 that publicly-traded corporation I mentioned,</p>           |

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| <p>1 that's not an open-end fund. That's an<br/>2 institutional account, so that's a fixed asset<br/>3 base.<br/>4 Q. What was the name of that<br/>5 publicly-traded corporation?<br/>6 A. It was Service Corp. International,<br/>7 SCI.<br/>8 Q. Do you know what the value of the<br/>9 funds were in October of 2001?<br/>10 MR. THEODOROU: Objection.<br/>11 A. The funds or the -- the whole group of<br/>12 accounts?<br/>13 Q. The whole group of accounts.<br/>14 A. I don't recall. Specifically I<br/>15 believe it was about \$4 billion.<br/>16 Q. Did you manage more government<br/>17 securities funds than the other portfolio<br/>18 managers on your trading desk at MFS?<br/>19 A. Yes.<br/>20 Q. And why was that?<br/>21 A. That was my area of expertise and<br/>22 responsibility in the group.<br/>23 Q. Did other portfolio managers have<br/>24 other areas of expertise?<br/>25 A. Yes.</p>  | <p>1 Q. No.<br/>2 Which desk did you sit on?<br/>3 A. I sat on a desk that we called high<br/>4 grade trading desk.<br/>5 Q. Where floor of the building was that<br/>6 desk on?<br/>7 A. We were on the 23rd floor.<br/>8 Q. Do you know how many portfolio<br/>9 managers sat on the high grade trading desk<br/>10 where you sat?<br/>11 A. Yes.<br/>12 Q. How many?<br/>13 MR. THEODOROU: As of October --<br/>14 MS. WILLIAMS: October 2001.<br/>15 A. I can just count. Six portfolio<br/>16 managers, as I recall.<br/>17 Q. When you say "high grade trading<br/>18 desk," what do you mean by high grade?<br/>19 A. The department I missed, we also have<br/>20 a -- it was a High Yield Department.<br/>21 So the distinction really was high<br/>22 grade is primary quality. So it distinguishes<br/>23 from noninvestment grade, which is the junk,<br/>24 High Yield Department, which I neglected to add<br/>25 in as we surveyed all the different areas of</p>   |
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| <p>1 Q. What were the other areas of<br/>2 expertise?<br/>3 A. Across the Fixed Income Department?<br/>4 Q. Yes.<br/>5 A. We covered virtually every area. So<br/>6 we had a specialist in mortgage-backed<br/>7 securities, a couple in corporate securities.<br/>8 We covered emerging market debt. We covered<br/>9 international. We had people responsible for<br/>10 money market. We had people responsible for<br/>11 municipal bonds, national municipal bonds, as<br/>12 well as different state municipal bond<br/>13 portfolios.<br/>14 And there might be other areas that<br/>15 escape me, but it was pretty much we covered all<br/>16 the bases for fixed income.<br/>17 Q. How many portfolio managers sat on<br/>18 your fixed income desk in October of 2001?<br/>19 MR. THEODOROU: Objection.<br/>20 A. I don't know. We had two different<br/>21 desks. We had one on the 22nd floor, which is<br/>22 where the municipal bond portfolio team worked.<br/>23 We had two trading desks on the 23rd floor, and<br/>24 I couldn't tell you, you know, exactly how many<br/>25 PMs that was. I could guess for you.</p> | <p>1 specialty in the fixed income area. There's<br/>2 actually -- they had their own trading desk also<br/>3 on the other side of the 23rd floor. There was<br/>4 a High Yield Department.<br/>5 So high grade is investment grade,<br/>6 corporates and government securities, agency<br/>7 securities and mortgage-backed securities.<br/>8 Q. You said there were six portfolio<br/>9 managers. Could you tell me their names in<br/>10 October of 2001?<br/>11 A. Yes.<br/>12 Q. What are they?<br/>13 A. Myself, Rick Smith, David Kennedy,<br/>14 Jeffrey Kurinsky, K-U-R-I-N-S-K-Y, Jim Calmes,<br/>15 C-A-L-M-E-S, and Peter Vaream spelled, I<br/>16 believe, V-A-R-E-A-M, Peter Vaream.<br/>17 Q. Did anyone -- besides portfolio<br/>18 managers, were there any other people that sat<br/>19 on the high grade trading desk where you sat?<br/>20 A. Yes.<br/>21 Q. Who else sat on desk?<br/>22 A. We had, I believe at that time two<br/>23 traders, and I think we had -- as I recall, we<br/>24 had open seats that the analysts could come and<br/>25 use.</p> |

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| <p>1 Q. Who were the two traders in October of<br/>2 2001?</p> <p>3 A. John Cadogan. I'm not actually<br/>4 100 percent sure either. You may not better<br/>5 than I do. C-A-D --</p> <p>6 Q. O-G-A-N.</p> <p>7 A. John Cadogan, and the other fellow I'm<br/>8 blanking on.</p> <p>9 Q. Does Aaron Mayo ring a bell?</p> <p>10 A. Yes, it does. Thank you.</p> <p>11 Q. What did Mr. Cadogan trade?</p> <p>12 A. As I recall, he would trade anything.<br/>13 His primary responsibility would have been for<br/>14 government agencies, mortgages.</p> <p>15 Q. What about Mr. Mayo, did he have a<br/>16 primary responsibility?</p> <p>17 A. I believe Aaron was a little bit<br/>18 junior, but we were using him more on corporate<br/>19 transactions, but I think the two were fairly<br/>20 interchangeable.</p> <p>21 Q. Did you work with any of these two<br/>22 traders more than the other?</p> <p>23 A. Yes.</p> <p>24 Q. Which one did you work with more?</p> <p>25 A. John.</p>  | <p>1 Information that was publicly<br/>2 available through the wires, through tools such<br/>3 as Bloomberg, Reuters.</p> <p>4 We would basically try to keep our ear<br/>5 to the ground and get information from any<br/>6 source.</p> <p>7 Q. Did you ever use any outside<br/>8 consultants?</p> <p>9 A. Yes.</p> <p>10 Q. Which outside consultant did you use<br/>11 in 2001?</p> <p>12 A. We had many. I remember we had ISI<br/>13 which was a fairly important one for us.</p> <p>14 Q. Does ISI stand for anything?</p> <p>15 A. It does. I just can't remember what<br/>16 it was.</p> <p>17 Q. Okay.</p> <p>18 A. It's a shop in New York owned by Ed<br/>19 Hyman who is an economist.</p> <p>20 We had, you know, many other smaller<br/>21 ones also.</p> <p>22 Q. Do you recall any of the names?</p> <p>23 A. We used Peter Davis. I recall that<br/>24 one. I'm drawing a blank right now.</p> <p>25 Q. Okay. Of the consultants that you</p>  |
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| <p>1 Q. I believe that you stated that one of<br/>2 your job responsibilities as portfolio manager<br/>3 was to help develop trading strategies; is that<br/>4 right?</p> <p>5 MR. THEODOROU: Objection.</p> <p>6 A. Yes.</p> <p>7 Q. How did you do that?</p> <p>8 MR. THEODOROU: Objection.</p> <p>9 A. Apart from being portfolio managers,<br/>10 we were all analysts in our different sectors of<br/>11 expertise.</p> <p>12 And it was from our research and<br/>13 analysis that we developed ideas in terms of how<br/>14 best to structure the portfolios.</p> <p>15 Q. What did you use in this research?<br/>16 What sources did you use?</p> <p>17 A. We used research from most any<br/>18 imaginable source, primarily -- Wall Street<br/>19 brokerages and investment banks all had large --<br/>20 well, some of them had large research<br/>21 departments, and we would use their -- you know,<br/>22 their product.</p> <p>23 We had different research boutiques<br/>24 that we were -- smaller shops that we might<br/>25 directly hire or pay through doing transactions.</p> | <p>1 used, did any of them provide you with<br/>2 information regarding treasury announcements?</p> <p>3 MR. THEODOROU: Objection.</p> <p>4 A. I don't think specifically. I don't<br/>5 recall.</p> <p>6 Q. In your job as portfolio manager, did<br/>7 you develop views of economic releases by the<br/>8 Federal Government?</p> <p>9 A. Yes. Your prior question, if I can?</p> <p>10 Q. Oh, sure.</p> <p>11 A. Would you just repeat it?</p> <p>12 Q. The question before the views<br/>13 question?</p> <p>14 A. Yeah.</p> <p>15 Q. I wanted to know if any of the<br/>16 consultants provided you information regarding<br/>17 Treasury Department announcements.</p> <p>18 A. I think the answer is yes. It's<br/>19 certainly not what we hired them for, but I<br/>20 think yes.</p> <p>21 Q. Did you develop views as a portfolio<br/>22 manager on what the Treasury Department was<br/>23 going to do in terms of announcements?</p> <p>24 MR. THEODOROU: Objection.</p> <p>25 A. Yes.</p> |

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| <p>1 Q. You mentioned Peter Davis. Do you<br/>2 recall the name of his company?<br/>3 A. I believe it was Peter Davis<br/>4 Investment Capital, Investment Ideas or<br/>5 something of that sort.<br/>6 Q. Does Davis Capital Investment Ideas<br/>7 ring a bell?<br/>8 A. That sounds right.<br/>9 Q. Do you know what Mr. Davis's title was<br/>10 at Davis Capital -- I'm just going to go call it<br/>11 Davis Capital for short. Is that okay with you?<br/>12 A. Yeah.<br/>13 Q. Do you know what Mr. Davis's title was<br/>14 a Davis Capital?<br/>15 A. No, I don't.<br/>16 Q. Besides Mr. Davis, did you ever have<br/>17 any contact with any other employees affiliated<br/>18 with Davis Capital?<br/>19 A. I believe on at least one or two<br/>20 occasions I spoke with an assistant who might<br/>21 have answered the phone if he was not in.<br/>22 Q. Do you recall the assistant's name?<br/>23 A. No.<br/>24 Q. How would Mr. Davis communicate<br/>25 information to you?</p> | <p>1 Treasury?<br/>2 A. We visited on two different trips. I<br/>3 believe one trip we visited with Mr. Anderson.<br/>4 Q. Do you recall Mr. Anderson's first<br/>5 name?<br/>6 A. Roger, I believe.<br/>7 Q. Did you visit with anyone else during<br/>8 that first trip?<br/>9 A. Excuse me?<br/>10 Q. Did you visit with anyone else at<br/>11 Treasury you during the first trip besides<br/>12 Mr. Anderson?<br/>13 A. I don't recall.<br/>14 Q. When was the first trip?<br/>15 A. I don't recall exactly.<br/>16 Q. Do you recall a year?<br/>17 A. I'm guessing, 1999, possibly 1998.<br/>18 Q. When was the second trip?<br/>19 A. I also don't recall exactly. I'm<br/>20 guessing the subsequent year.<br/>21 Q. It was after the --<br/>22 A. I think it was two years back to back.<br/>23 Q. And did you visit Treasury during the<br/>24 second trip?<br/>25 A. Yes.</p>   |
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| <p>1 MR. THEODOROU: Objection.<br/>2 A. Primarily through E mails, faxes,<br/>3 occasionally through phone calls and<br/>4 occasionally in person. He came to visit our<br/>5 office once.<br/>6 Q. Did you ever go to visit Mr. Davis?<br/>7 A. Yes.<br/>8 Q. And how many times did you go to visit<br/>9 him?<br/>10 A. I didn't visit his office. We did<br/>11 visit or I had a visit with him on two occasions<br/>12 in Washington, where he organized a day of<br/>13 activities.<br/>14 Q. What kind of activities?<br/>15 A. Visiting with different government<br/>16 officials in different departments of the<br/>17 government.<br/>18 Q. Do you recall any departments?<br/>19 A. Sorry?<br/>20 Q. Do you recall which departments?<br/>21 A. I recall we visited at the Federal<br/>22 Reserve, the Treasury. We visited Capitol Hill.<br/>23 We visited the Office of Management and Budget,<br/>24 OMB.<br/>25 Q. Do you recall who you visited at the</p>                        | <p>1 Q. Do you recall who you visited with at<br/>2 Treasury during the second trip?<br/>3 A. I don't remember specifically who we<br/>4 visited. There were several -- I might have<br/>5 made two stops, two different meetings. I do<br/>6 remember one meeting was attended by several,<br/>7 and one of those people was Mr. Malvey.<br/>8 Q. Do you remember Mr. Malvey's first<br/>9 name?<br/>10 A. I don't.<br/>11 Q. Does Paul ring a bell?<br/>12 A. Yes.<br/>13 Q. Except for these two trips to<br/>14 Washington, did you ever visit with Mr. Davis in<br/>15 Washington, D.C.?<br/>16 A. No. As I mentioned, he came to our<br/>17 offices.<br/>18 Q. When did Mr. Davis come to MFS's<br/>19 office?<br/>20 A. When we first hired him, prior to<br/>21 those visits in Washington.<br/>22 Q. Prior to October 31, 2001, were you<br/>23 aware that the Treasury would periodically<br/>24 announce its refunding needs?<br/>25 MR. THEODOROU: Objection.</p> |

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| <p>1 A. Yes.</p> <p>2 Q. Do you know how often this would</p> <p>3 occur?</p> <p>4 MR. SHOPE: Objection. Are you</p> <p>5 asking what his knowledge was in October of</p> <p>6 2001, or are you asking what his knowledge is</p> <p>7 today?</p> <p>8 BY MS. WILLIAMS:</p> <p>9 Q. I want to know your knowledge in</p> <p>10 October of 2001.</p> <p>11 MR. THEODOROU: Objection.</p> <p>12 A. And your question? Sorry.</p> <p>13 Q. That as of October 31, 2001, did you</p> <p>14 know how often the Treasury Department would</p> <p>15 announce its refunding needs?</p> <p>16 A. Yes. The Treasury held quarterly</p> <p>17 refundings, so presumably they had an</p> <p>18 announcement prior to all of those.</p> <p>19 Q. And do you know which month those</p> <p>20 refunding announcements took place?</p> <p>21 A. No.</p> <p>22 Q. Were the Treasury refunding</p> <p>23 announcements a source of information that you</p> <p>24 used in your job as portfolio manager?</p> <p>25 MR. THEODOROU: Objection.</p>   | <p>1 And you answered, "Yes.</p> <p>2 "Is that a yes?</p> <p>3 "Yes."</p> <p>4 So do you recall being asked those</p> <p>5 questions and giving those answers?</p> <p>6 A. I don't recall.</p> <p>7 Q. Do you believe you were asked those</p> <p>8 questions and you gave that answer?</p> <p>9 A. Yes.</p> <p>10 Q. So was the Treasury refunding</p> <p>11 announcement a source of information for you in</p> <p>12 your job?</p> <p>13 MR. SHOPE: Well, this says "in any</p> <p>14 was." That actually means was it in any way a</p> <p>15 source of information, and that's presumably</p> <p>16 what the question was, correct?</p> <p>17 MS. WILLIAMS: That's correct. I</p> <p>18 believe that's a typographical error.</p> <p>19 MR. SHOPE: So are you asking him</p> <p>20 now the question whether or not --</p> <p>21 MS. WILLIAMS: It was in any way a</p> <p>22 source of information for him in his job.</p> <p>23 A. Yes.</p> <p>24 Q. In what way did you use these</p> <p>25 announcements in your job?</p>  |
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| <p>1 A. No. That's very second tier kind of</p> <p>2 information.</p> <p>3 Q. When you say "second tier," what was</p> <p>4 first tier type of information?</p> <p>5 A. My interest is more in issues</p> <p>6 surrounding fiscal monetary policy, issues</p> <p>7 surrounding economic growth, the thrust of</p> <p>8 economic growth and how it interacts with the</p> <p>9 policies, so the government, so the fiscal</p> <p>10 policies and monetary policies of the</p> <p>11 government. Those are more macro issues.</p> <p>12 Issues that were used at the quarterly</p> <p>13 refundings are entirely secondary.</p> <p>14 Q. If I could ask you to turn to</p> <p>15 Exhibit 2, page 89. And you can start at line</p> <p>16 five and read to line 16 or so.</p> <p>17 (Pause)</p> <p>18 BY MS. WILLIAMS:</p> <p>19 Q. Let me know when you're finished.</p> <p>20 A. Okay.</p> <p>21 Q. Okay. You were asked, and I'm going</p> <p>22 to start in the middle line 12, "Are these</p> <p>23 refunding conferences or announcements in any</p> <p>24 was" -- I think that's a typo -- "a source of</p> <p>25 information for you in your job?"</p> | <p>1 A. Like I said, it's very secondary</p> <p>2 information. It points to what the primary</p> <p>3 dealers are focusing on.</p> <p>4 For them this is a big deal. To the</p> <p>5 extent that they are an actor in the market,</p> <p>6 it's relevant. It's very second tier.</p> <p>7 MS. WILLIAMS: John would like to</p> <p>8 take a break. Is it okay to take five minutes?</p> <p>9 MR. THEODOROU: Sure. That's fine.</p> <p>10 THE VIDEOGRAPHER: Going off the</p> <p>11 record, 10:22 a.m.</p> <p>12 (Recess taken)</p> <p>13 THE VIDEOGRAPHER: Back on the</p> <p>14 record, 10:33 a.m.</p> <p>15 BY MS. WILLIAMS:</p> <p>16 Q. Mr. Northern, before we broke, I was</p> <p>17 asking you about the way in which the Treasury</p> <p>18 refunding announcements were used by you in your</p> <p>19 job, and you mentioned that they point to what</p> <p>20 the primary dealers are focusing on.</p> <p>21 And I wanted to know how that assists</p> <p>22 you in your job as portfolio manager?</p> <p>23 A. Like I said, it's very secondary.</p> <p>24 Q. What do you mean by "very secondary"?</p> <p>25 A. It's not very useful information.</p> |

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| <p>1 You have to understand, we talk with</p> <p>2 our counterparties with the primary dealers who</p> <p>3 have direct lines. We talk with them on an</p> <p>4 ongoing basis.</p> <p>5 For them this is a big deal, so it's</p> <p>6 something they talk about, you know, so to the</p> <p>7 extent that they're talking about it, it's</p> <p>8 affecting, impacting their business, you know,</p> <p>9 it's something that, you know, they would be</p> <p>10 aware of.</p> <p>11 In terms of structuring portfolios and</p> <p>12 doing our job for our shareholders, it's</p> <p>13 irrelevant.</p> <p>14 Q. Does it ever impact your business?</p> <p>15 MR. THEODOROU: Objection.</p> <p>16 A. Like I said, in terms of structuring</p> <p>17 the portfolios and delivering good total returns</p> <p>18 for shareholders, it's essentially irrelevant.</p> <p>19 Q. Right. But my question was a little</p> <p>20 broader.</p> <p>21 As a portfolio manager, did those</p> <p>22 announcements ever affect your business?</p> <p>23 MR. THEODOROU: Objection.</p> <p>24 A. Yes.</p> <p>25 Q. In 2001 what time did you usually</p>   | <p>1 what's on the plate today, so to kind of get</p> <p>2 yourself set up.</p> <p>3 If there's portfolio work to do, start</p> <p>4 working on that. If there are meetings to plan</p> <p>5 for, start getting ready for those.</p> <p>6 Q. You said that you usually would read</p> <p>7 the paper before you got to work?</p> <p>8 A. Yes.</p> <p>9 Q. And what did you do once you were at</p> <p>10 work to get a lay of the land, so to speak?</p> <p>11 MR. THEODOROU: Objection.</p> <p>12 A. I would start reviewing market levels</p> <p>13 on monitors that we had.</p> <p>14 I would start reviewing with brokers,</p> <p>15 kind of get their take -- actually, they're a</p> <p>16 very good source of sort of a summary. You</p> <p>17 know, what has occurred is basically their job</p> <p>18 in the morning is to deliver sort of the</p> <p>19 overnight recap of events. So you talk with</p> <p>20 some dealers, review research.</p> <p>21 And if it's portfolio work, start, you</p> <p>22 know, reviewing analytic reports and start</p> <p>23 basically the work of, you know, monitoring what</p> <p>24 needs to be done at any given point in time in</p> <p>25 the portfolios.</p> |
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| <p>1 arrive at work at MFS?</p> <p>2 MR. THEODOROU: Objection.</p> <p>3 A. Generally around 7:30, 7, 7:30 in the</p> <p>4 morning.</p> <p>5 Q. What was your typical morning routine</p> <p>6 after you arrived?</p> <p>7 MR. THEODOROU: Objection.</p> <p>8 A. As I remember, by then I read the</p> <p>9 papers, which is sort of the first step.</p> <p>10 You have to understand, even if you</p> <p>11 come in at seven in the morning, UK's been up</p> <p>12 and running for five or six hours. So the first</p> <p>13 thing you do is try to get a lay of the land in</p> <p>14 terms of events that are occurring, kind of</p> <p>15 changes in the marketplace that might have</p> <p>16 occurred overnight. Because essentially the</p> <p>17 market is a 24-hour market, so it gets handled</p> <p>18 from the US, the West Coast, the Far East, the</p> <p>19 UK and back. So there's a period of time you</p> <p>20 need to spend just to kind of get resituated,</p> <p>21 what's happened since you went home last night.</p> <p>22 That's the first order of business.</p> <p>23 The second is while it's still quiet</p> <p>24 and you have a little bit of time to think, you</p> <p>25 know, what am I doing today, what is on my --</p> | <p>1 Q. You said that you would review market</p> <p>2 levels on monitors you had. What do you mean by</p> <p>3 monitors?</p> <p>4 A. Screens, old CRTs, tubes, television</p> <p>5 screens.</p> <p>6 Q. Okay. And how would the -- was there</p> <p>7 any sort of host for the market level that --</p> <p>8 let me rephrase that.</p> <p>9 What appeared on these screens?</p> <p>10 A. The screens were a delivery for</p> <p>11 different services that we might subscribe to or</p> <p>12 for different portfolio management or analytic</p> <p>13 tools that we might use.</p> <p>14 Q. And which services did you subscribe</p> <p>15 to?</p> <p>16 A. That I can remember now, we had</p> <p>17 Bloomberg. We had Reuters. We had -- we used</p> <p>18 Yield Book as a portfolio analytic tool.</p> <p>19 We had an internal tool for doing</p> <p>20 transactions, that was FITS, F-I-T-S, which was</p> <p>21 sort of a -- it's an acronym for Fixed Income</p> <p>22 Trading System, which was essentially a</p> <p>23 home-grown work flow kind of product that they</p> <p>24 built, and various other analytic and portfolio</p> <p>25 tools.</p>  |

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|---|---|
| <p>1 Q. When you were reviewing market levels</p> <p>2 in the morning, which of these services did you</p> <p>3 typically use?</p> <p>4 MR. THEODOROU: Objection.</p> <p>5 A. As I recall, Reuters and Bloomberg. I</p> <p>6 think we used to have Telerate. I'm not sure if</p> <p>7 we still had Telerate at that point. Telerate</p> <p>8 is T-E-L-E-R-A-T-E.</p> <p>9 And I think we had other data</p> <p>10 services. I just can't remember exactly what</p> <p>11 they were.</p> <p>12 Q. What, if any, news did you review on</p> <p>13 these services as part of your morning routine?</p> <p>14 A. News tickers do you mean?</p> <p>15 Q. Yes. If there was news available on</p> <p>16 the service, did you review any of the news?</p> <p>17 A. Not likely. Particularly a service</p> <p>18 like Reuters or Bloomberg, there's a constant</p> <p>19 flow of stories, so it's just constantly</p> <p>20 scrolling. You could spend your whole day</p> <p>21 monitoring that and not get anything else done.</p> <p>22 So it was there.</p> <p>23 If there was a release, like a CPI</p> <p>24 release, it would it -- the headline would hit</p> <p>25 there, and you might pull up the story if you're</p> | <p>1 would be to take those phone calls. They would</p> <p>2 typically call us.</p> <p>3 Q. They would typically call you in the</p> <p>4 morning?</p> <p>5 A. Yes, and the other portfolio managers.</p> <p>6 Part of the routine for -- these were</p> <p>7 salesmen or salespeople. Part of their morning</p> <p>8 routine is to collect the information that</p> <p>9 they've collected overnight, put that together</p> <p>10 and call their clients. So being one of the</p> <p>11 clients for these dealers, we would receive</p> <p>12 those phone calls.</p> <p>13 So the fellow covering us for</p> <p>14 government securities, for example, might</p> <p>15 call -- make two or three phone calls to MFS to</p> <p>16 portfolio managers that might be interested.</p> <p>17 Q. What, if any, E mails did you review</p> <p>18 as part of your morning routine?</p> <p>19 MR. THEODOROU: Objection.</p> <p>20 A. Your question? I'm sorry.</p> <p>21 Q. Did you review E mails as part of your</p> <p>22 morning routine?</p> <p>23 A. I constantly reviewed E mails, so yes.</p> <p>24 Q. Are you familiar with a document</p> <p>25 called a High Grade Trading Report?</p> |
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| <p>1 interested. But generally it wasn't something</p> <p>2 first thing in the morning I would start looking</p> <p>3 at it, because it's just constantly scrolling.</p> <p>4 You could go back and get a record of</p> <p>5 the last hour, last two hours. You could do</p> <p>6 that sort of work.</p> <p>7 Q. Did you ever do that?</p> <p>8 A. Yes.</p> <p>9 Q. You mentioned that you would talk with</p> <p>10 dealers in order to figure out what the changes</p> <p>11 in the marketplace were. Are there any dealers</p> <p>12 that you would call more than others?</p> <p>13 MR. THEODOROU: Objection.</p> <p>14 A. Yes.</p> <p>15 Q. Who?</p> <p>16 A. As I recall now, I'd call them the</p> <p>17 usual suspects. It would be the main US primary</p> <p>18 dealers, Goldman Sachs, JP Morgan, UBS</p> <p>19 Securities, Merrill, Bear Stearns, Greenwich</p> <p>20 Securities. And I may be leaving a few out.</p> <p>21 Q. Did you call or did you talk with</p> <p>22 dealers every day in the morning to get an idea</p> <p>23 of the change in the marketplace?</p> <p>24 A. Every day, maybe not every day, but</p> <p>25 yes, that would be part of my morning routine</p>                         | <p>1 A. Yes.</p> <p>2 Q. What is it?</p> <p>3 A. I remember -- if I'm thinking about</p> <p>4 the right document, that we summarized once a</p> <p>5 day the transactions that were done the prior</p> <p>6 day and circulated that. I believe one of the</p> <p>7 PMs had to sign off on it to check it for</p> <p>8 accuracy.</p> <p>9 Q. Only one of the -- did each portfolio</p> <p>10 manager have to sign it for accuracy or only</p> <p>11 one?</p> <p>12 I'm just trying to understand. You</p> <p>13 said you believe one of the portfolio managers,</p> <p>14 you believe, had to sign off. Do you mean only</p> <p>15 one on the desk or each of them had to sign off?</p> <p>16 A. I don't recall. It could well have</p> <p>17 been.</p> <p>18 Q. Do you recall what time of day you</p> <p>19 received the High Grade Trading Report?</p> <p>20 A. I don't believe I received it so much</p> <p>21 as it was -- I don't recall what the process was</p> <p>22 for distributing that.</p> <p>23 I do remember at the end of the day it</p> <p>24 was one of the assistant's responsibilities to</p> <p>25 compile this report, it would be the trades in</p>                |

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| <p>1 particular to the day, and it would be left out<br/>2 at a place where the assistants worked.<br/>3 So anybody could review it. It was<br/>4 actually interesting information. So if you had<br/>5 been away from the office all day, you'd have<br/>6 one place to go to review all the activity that<br/>7 your colleagues had in their portfolios. So you<br/>8 get a sense of what's gone on today.<br/>9 Whether that got distributed to us<br/>10 into our inboxes, I can't remember.<br/>11 Q. What, if any, meetings did you attend<br/>12 as part of your morning routine at MFS?<br/>13 MR. THEODOROU: Objection.<br/>14 A. We had a departmental meeting in the<br/>15 mornings at nine o'clock.<br/>16 Q. Was this Monday through Friday you had<br/>17 a nine o'clock meeting?<br/>18 A. Yeah. We tried to daily get everybody<br/>19 together.<br/>20 Q. What was the purpose of this meeting?<br/>21 A. The purpose -- it's to capture the<br/>22 synergy of having a large group of professionals<br/>23 and put them in one place and review what<br/>24 they've been doing, what they've been thinking,<br/>25 what they're thinking of doing going forward,</p>                             | <p>1 they were planning on doing in the portfolios,<br/>2 giving analysts the sense of, you know, what are<br/>3 they interested in.<br/>4 And the analysts could share if they'd<br/>5 had meetings of significance with companies, if<br/>6 there were meetings coming up that would be of<br/>7 interest, strategies that they were developing.<br/>8 Anyone could share, including the<br/>9 traders, sort of intelligence, what they've<br/>10 learned, you know, since we'd last met.<br/>11 It was really an open forum for, you<br/>12 know, everything from how the Patriots did on<br/>13 Sunday.<br/>14 Q. Was there any discussions of<br/>15 announcements that were going to be made that<br/>16 day?<br/>17 MR. THEODOROU: Objection.<br/>18 A. There could be.<br/>19 Q. Who was your supervisor at MFS?<br/>20 MR. THEODOROU: Objection.<br/>21 BY MS. WILLIAMS:<br/>22 Q. In October of 2001?<br/>23 A. Joan Batchelder. The spelling, I<br/>24 believe, is B-A-T-C-H-E-L-D-E-R. I'm not<br/>25 exactly sure.</p>   |
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| <p>1 intelligence they might have garnered from the<br/>2 marketplace. It's a vehicle for just staying in<br/>3 touch.<br/>4 And it's a vehicle for debate too.<br/>5 You can have ideas or colleagues can have a<br/>6 chance of challenging your ideas, you know, or<br/>7 ask you to elaborate if they're interested.<br/>8 Q. Who is the meeting for? Who attended<br/>9 the meeting generally speaking? I don't want<br/>10 you to name names.<br/>11 A. Well, it was a departmental meeting.<br/>12 Primarily the investment professionals. So it<br/>13 would be the portfolio managers and the<br/>14 analysts, but also the traders.<br/>15 And I think anybody was invited to go.<br/>16 I would encourage people to go. You know, even<br/>17 our trading assistants or people that didn't<br/>18 have direct portfolio responsibilities, the more<br/>19 they learn about the business, you know, the<br/>20 better, and that's a great forum for it.<br/>21 Q. What kind of issues were discussed<br/>22 generally in these meetings?<br/>23 A. Like I said, the portfolio managers<br/>24 might share their thoughts and their strategies,<br/>25 what they've been doing in the portfolios, what</p> | <p>1 Q. What was Miss Batchelder's title in<br/>2 October 2001?<br/>3 A. She was director of fixed income,<br/>4 senior vice president of the company.<br/>5 Q. What are you aware of that<br/>6 Miss Batchelder did to supervise your<br/>7 performance?<br/>8 A. She would review our performance on an<br/>9 ongoing basis.<br/>10 We would have weekly reports that<br/>11 would circulate at the 9 a.m. meeting, for<br/>12 example, that would rank all the portfolios<br/>13 relative to their peers by quintile of<br/>14 performance relative to other funds.<br/>15 So, for example, if we had 30 open-end<br/>16 mutual funds between the municipal, the high<br/>17 yield, the international and the high grade<br/>18 groups, they were all there, and they're year to<br/>19 date, and they're trailing one-year, maybe one-,<br/>20 three-, five-year quintile performance levels<br/>21 would be on this sheet of paper. So your<br/>22 performance was monitored almost on a continuous<br/>23 basis relative to your competitors.<br/>24 She also scheduled, I don't remember<br/>25 the frequency, but at a minimum it was annual,</p> |

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| <p>1 review portfolio-by-portfolio manager of the --</p> <p>2 all the portfolios they were responsible for.</p> <p>3 And she would ask us to put together a pretty</p> <p>4 detailed report of past strategy, past</p> <p>5 performance, what worked, what didn't work, what</p> <p>6 your strategies were going forward and just</p> <p>7 basically get from you a sense of what you'd</p> <p>8 been up to and what are you planning on being up</p> <p>9 to and whatever other administrative or</p> <p>10 portfolio managers -- portfolio management</p> <p>11 issues might come up.</p> <p>12 But she would meet with us in a fairly</p> <p>13 formal setting to do that.</p> <p>14 Q. When you say she asked you for a</p> <p>15 report, was that written? Did she ask you for a</p> <p>16 written report?</p> <p>17 A. Yes.</p> <p>18 Q. And how often would you have to</p> <p>19 generate a written report for Miss Batchelder?</p> <p>20 A. The review -- the formal review I was</p> <p>21 just talking about, at a minimum that was</p> <p>22 annual.</p> <p>23 Q. Okay.</p> <p>24 A. We had to produce more frequent</p> <p>25 reports that were for the directors. Funds</p> | <p>1 employment reports? Do you recall any?</p> <p>2 A. I don't recall specifically, but</p> <p>3 that's the sort of thing that very well could</p> <p>4 come up.</p> <p>5 Q. As a portfolio manager, are you</p> <p>6 required --</p> <p>7 A. And undoubtedly did on occasion.</p> <p>8 If you're asking ever did that come</p> <p>9 up, I don't recall specifically, but guaranteed</p> <p>10 we did talk about labor reports.</p> <p>11 Q. Do you think you also talked about GDP</p> <p>12 reports?</p> <p>13 MR. THEODOROU: Objection.</p> <p>14 A. I think that's unlikely.</p> <p>15 GDP report is a backward-looking</p> <p>16 report, and it's subject to very large amounts</p> <p>17 of revision after the fact.</p> <p>18 So you close out a quarter. I think</p> <p>19 the first preliminary GDP record comes out a</p> <p>20 month down the road. So it's -- for the</p> <p>21 market's kind of time frame, it's already</p> <p>22 ancient history.</p> <p>23 And that is a number subject to very</p> <p>24 large degrees of revision.</p> <p>25 And then it comes out -- the second</p>   |
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| <p>1 typically would meet -- for each fund I would</p> <p>2 have to meet with the directors several times a</p> <p>3 year. And it could be annual, it could be</p> <p>4 quarterly depending on the portfolio, but there</p> <p>5 would be a review with the director, and she</p> <p>6 would also review that report.</p> <p>7 Q. I want to go back to the 9 a.m.</p> <p>8 meeting for a minute.</p> <p>9 You said there could be announcements</p> <p>10 of -- there could be discussion of announcements</p> <p>11 that were going to take place that day. Do you</p> <p>12 recall any --</p> <p>13 MR. THEODOROU: Objection.</p> <p>14 Q. -- any discussion in the 9 a.m.</p> <p>15 meetings that a GDP announcement was going to be</p> <p>16 made that day?</p> <p>17 MR. THEODOROU: Objection.</p> <p>18 BY MS. WILLIAMS:</p> <p>19 Q. I'm not talking about any particular</p> <p>20 day. I'm talking about generally speaking.</p> <p>21 A. I don't.</p> <p>22 Q. What about any discussion at 9 a.m.</p> <p>23 meetings about Treasury refunding announcements?</p> <p>24 A. I don't recall.</p> <p>25 Q. Any discussion about Labor Department</p>                              | <p>1 report comes out a month after that, and then a</p> <p>2 third comes out a month after that. You know,</p> <p>3 so by the time you're done reporting GDP, it</p> <p>4 could be five or six months old information.</p> <p>5 Q. Do you think that Treasury refunding</p> <p>6 announcements were things that were discussed in</p> <p>7 the meetings, but you don't recall specifically?</p> <p>8 MR. THEODOROU: Objection.</p> <p>9 A. I think that that's also unlikely.</p> <p>10 Q. Why?</p> <p>11 A. Partially the same reasons. It's not</p> <p>12 a -- it wouldn't be something of general</p> <p>13 interest to the group. It wouldn't be something</p> <p>14 that would serve either to help us formulate our</p> <p>15 investment strategies.</p> <p>16 You know, we have to do a triage of</p> <p>17 information that's important and not important,</p> <p>18 and that's part of the job, and I don't think</p> <p>19 that would make the cut.</p> <p>20 Q. Were Treasury refunding announcements</p> <p>21 backward looking like GDP announcements?</p> <p>22 A. Part of the refunding announcement</p> <p>23 is -- relates to sources and uses. So part of</p> <p>24 it is backward, its uses of funds, so some is</p> <p>25 backward, some is forward looking.</p> |

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| <p>1 Q. As a portfolio manager, were you<br/>2 required to get any approval from anyone at MFS<br/>3 before trading in your portfolios?<br/>4 A. No.<br/>5 Q. Did you have any supervisory authority<br/>6 over anyone at MFS in October of 2001?<br/>7 A. No, I didn't have any direct reports<br/>8 to me.<br/>9 Q. Did you have the authority to commit<br/>10 capital at MFS in 2001?<br/>11 A. Yes. That's one of my<br/>12 responsibilities as portfolio manager.<br/>13 Q. What, if any, restrictions were placed<br/>14 on your ability to commit capital?<br/>15 A. Well, different portfolios have<br/>16 different investment guidelines that serve to<br/>17 outline what restrictions there are.<br/>18 Beyond that, I believe we also had for<br/>19 some of the portfolios additional guidelines<br/>20 that might be even more restrictive than what<br/>21 you were theoretically allowed to do by, say, a<br/>22 prospectus in an open-end mutual fund or by<br/>23 investment guidelines from a private account.<br/>24 So you might be able to go up to, say,<br/>25 30 percent international or 30 percent high</p> | <p>1 think there would be some training provided by<br/>2 our legal department.<br/>3 Q. Did you ever receive any --<br/>4 A. And --<br/>5 Q. I'm sorry. I didn't mean to cut you<br/>6 off?<br/>7 A. And possibly also compliance would<br/>8 attend those meetings as well to discuss issues<br/>9 surrounding compliance.<br/>10 Q. Did you ever receive any training at<br/>11 MFS on the use of material nonpublic<br/>12 information?<br/>13 A. Yes.<br/>14 Q. Could you tell me about that training?<br/>15 A. I don't recall specifically. I think<br/>16 it would have been in the context of what I just<br/>17 reviewed with you, of the annual updates for<br/>18 people that were registered and at our meetings<br/>19 at our roundtable or maybe internally with our<br/>20 legal compliance departments.<br/>21 Q. Did you receive this training prior to<br/>22 October 31, 2001?<br/>23 A. Yes.<br/>24 Q. Do you recall if you ever received any<br/>25 documents from MFS regarding the receipt and use</p> |
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| <p>1 yield, for example, but -- by prospectus, but<br/>2 you might have an internal guideline, and we<br/>3 won't go more than 20 percent.<br/>4 Q. During your employment at MFS, what,<br/>5 if any, training did you receive?<br/>6 MR. THEODOROU: Objection.<br/>7 BY MS. WILLIAMS:<br/>8 Q. I want to talk about formal, not<br/>9 informal training.<br/>10 MR. THEODOROU: In what area?<br/>11 MS. WILLIAMS: In any area.<br/>12 A. Well, I did attend classes, so that<br/>13 was paid for by MFS. After I started working<br/>14 there, they paid for my -- the completion of my<br/>15 MBA.<br/>16 Training provided by MFS was<br/>17 primarily -- other than on the job, we did have<br/>18 formal sessions that were -- as Series 7 or<br/>19 Series 63 or whatever registrations I had,<br/>20 people with those registrations are required --<br/>21 the companies are required to provide a meeting<br/>22 annually, I think at a minimum, to review<br/>23 current developments in terms of regulation.<br/>24 And I would attend those.<br/>25 And we had investment roundtables. I</p>                                | <p>1 of material nonpublic information?<br/>2 A. Yes.<br/>3 MS. WILLIAMS: I'd like to have<br/>4 this marked as Exhibit 3.<br/>5 (Exhibit 3 marked<br/>6 for identification)<br/>7 BY MS. WILLIAMS:<br/>8 Q. Have you seen this document before,<br/>9 sir?<br/>10 A. Yes.<br/>11 Q. What is it?<br/>12 A. It's labeled Statement of Guidelines<br/>13 With Respect to Receipt and Use of Material<br/>14 Nonpublic Inside Information. It's adopted by<br/>15 the Executive Committee May 15th of '89.<br/>16 Q. Did you receive this document prior to<br/>17 October 31, 2001?<br/>18 A. Yes.<br/>19 Q. Do you know if you reviewed the<br/>20 document when you received it?<br/>21 A. Yes.<br/>22 Q. Do you know if you received any other<br/>23 documents from MFS regarding the use of material<br/>24 nonpublic information?<br/>25 A. Yes.</p>   |

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|---|---|
| <p>1 Q. What other documents did you receive?</p> <p>2 A. I recall we had a briefing by our</p> <p>3 counsel once at one of our roundtables. I think</p> <p>4 he had a handout.</p> <p>5 Q. Was that before October 31, 2001?</p> <p>6 A. Yes.</p> <p>7 Q. Any other documents you recall</p> <p>8 receiving at MFS?</p> <p>9 A. I think we had an ethics -- I think we</p> <p>10 had another document. I don't recall what it</p> <p>11 was titled.</p> <p>12 I think we had an internal sort of --</p> <p>13 I can't remember how you call it -- Code of</p> <p>14 Conduct document.</p> <p>15 Q. Did you review the Code of Conduct?</p> <p>16 A. Yes.</p> <p>17 Q. Prior to October 31, 2001, had you</p> <p>18 reviewed the Code of Conduct?</p> <p>19 A. Yes.</p> <p>20 Q. Did you ever receive any training on</p> <p>21 the use of material nonpublic information from</p> <p>22 any other employers besides MFS?</p> <p>23 A. Yes.</p> <p>24 Q. Could you tell me who you worked for</p> <p>25 when you received that training?</p>                  | <p>1 A. Yes.</p> <p>2 Q. Do you recall how much the bonus was?</p> <p>3 A. No. The bonus I received in 2001</p> <p>4 would have been for the year 2000 I received</p> <p>5 some time in the beginning of the year.</p> <p>6 Q. Do you recall approximately how much</p> <p>7 it was?</p> <p>8 A. I could tell you my total compensation</p> <p>9 was in excess of a million dollars or close by.</p> <p>10 Q. And that total compensation, are you</p> <p>11 including any compensation you received from the</p> <p>12 profit-sharing, 401k plans?</p> <p>13 A. Yeah, in terms of total compensation,</p> <p>14 it would have all added up. 401k, I think, is</p> <p>15 an employee contribution. Actually, they had a</p> <p>16 match. I think they might have had a match, I</p> <p>17 remember. But, yeah, total compensation.</p> <p>18 Q. Was there any sort of vesting that you</p> <p>19 needed to do in order to receive money from any</p> <p>20 of the plans, profit-sharing, for example?</p> <p>21 A. Yeah, yes.</p> <p>22 Q. Do you know how long that vesting</p> <p>23 period was?</p> <p>24 A. I don't remember the details of the</p> <p>25 plans. I was way past being vested.</p> |
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| <p>1 A. Yes.</p> <p>2 Q. Who?</p> <p>3 A. Merrill Lynch.</p> <p>4 Q. What do you recall about -- scratch</p> <p>5 that.</p> <p>6 Do you recall when in your tenure at</p> <p>7 Merrill Lynch you received that training?</p> <p>8 A. Yeah. Obviously it was part of my</p> <p>9 Series 7 registration. It was part of the</p> <p>10 training that you'd get to pass the Series 7</p> <p>11 license.</p> <p>12 Q. How was your compensation structured</p> <p>13 at MFS in 2001?</p> <p>14 MR. THEODOROU: Objection.</p> <p>15 A. We had a base salary and bonus. We</p> <p>16 had a profit-sharing plan. We had a 401k plan.</p> <p>17 And they may have capped it -- I think they had</p> <p>18 a defined benefit plan as well that I</p> <p>19 participated in.</p> <p>20 Q. What was your base salary in 2001?</p> <p>21 MR. THEODOROU: Objection.</p> <p>22 A. I don't recall exactly. As I recall,</p> <p>23 it was capped at 150,000 across the company,</p> <p>24 across most people in the company.</p> <p>25 Q. Did you receive a bonus in 2001?</p> | <p>1 Q. Okay.</p> <p>2 A. It started in '86. We're talking</p> <p>3 about 2001. So it's 15 years down the road. I</p> <p>4 was fully vested.</p> <p>5 Q. In 2002 did you receive a bonus for</p> <p>6 2001?</p> <p>7 A. Yes.</p> <p>8 Q. Do you recall how much that bonus was?</p> <p>9 A. I don't. But in terms of total comp,</p> <p>10 it would have been comparable for the prior</p> <p>11 year. It was probably a little bit more.</p> <p>12 Q. So more than a million dollars?</p> <p>13 A. Yeah. I think every year I worked at</p> <p>14 MFS the pay was slightly higher.</p> <p>15 Q. When were the bonus us received; i.e.,</p> <p>16 what time of year were these bonuses received?</p> <p>17 A. I don't recall.</p> <p>18 Q. Do you know if it was in -- what</p> <p>19 season it was in?</p> <p>20 A. It was early the following year.</p> <p>21 Q. When you say "early," do you know</p> <p>22 about a month?</p> <p>23 A. I don't remember.</p> <p>24 Q. So before June?</p> <p>25 A. Oh, yes.</p>   |

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|---|--|
| <p>1 Q. To what extent was your bonus based on</p> <p>2 the performance of a portfolios you managed?</p> <p>3 A. The bonuses were determined by my</p> <p>4 boss, and she didn't share with me.</p> <p>5 Q. Did the performance of the portfolios</p> <p>6 affect your bonus at all?</p> <p>7 A. I'd hope so, yeah, yeah.</p> <p>8 We tried to incent the portfolio</p> <p>9 managers properly. So the focus was on, you</p> <p>10 know, not how you did that day, it was how you</p> <p>11 did on the one-, three-, five-, 10-year basis.</p> <p>12 So the goal is consistent, stable returns that</p> <p>13 beat most of your competitors, and the emphasis</p> <p>14 being on long-term and stable. So it's really</p> <p>15 three-, five-, 10-year returns that are crucial.</p> <p>16 Q. Okay.</p> <p>17 A. The determination of the bonus,</p> <p>18 though, at the end of the day is entirely</p> <p>19 subjective. It's done by senior management.</p> <p>20 And as any subjective process, you know, a lot</p> <p>21 of things can come into play, and they don't</p> <p>22 necessarily share with you how they go about</p> <p>23 determining that.</p> <p>24 Q. Did you have a view that the better</p> <p>25 your portfolios performed, the higher your bonus</p> | <p>1 execute a trade?</p> <p>2 A. Well, they had to use their judgment</p> <p>3 in terms of how to accomplish the best</p> <p>4 execution.</p> <p>5 Q. I mean practically speaking, what was</p> <p>6 required?</p> <p>7 A. Obviously first they have to use some</p> <p>8 judgment.</p> <p>9 Q. Okay.</p> <p>10 A. They have any number of different</p> <p>11 dealers that they can turn to. So they need to</p> <p>12 select one or more dealers where they think they</p> <p>13 could get the best price, you know, if you're</p> <p>14 buying bond, the best price, or if you're</p> <p>15 selling, try to select one or several dealers</p> <p>16 from whom you think you're going to get the best</p> <p>17 price. So that's the first thing.</p> <p>18 Second, you go out, call them, ask</p> <p>19 them for the price and then collect that price</p> <p>20 information and then pick the best one.</p> <p>21 Q. In October -- in 2001, not October,</p> <p>22 just in 2001, how did you typically notify the</p> <p>23 trader that you had an order that you wanted to</p> <p>24 give them to execute a trade?</p> <p>25 A. Typically we used our order entry</p>  |
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| <p>1 was likely to be?</p> <p>2 MR. THEODOROU: Objection.</p> <p>3 A. I would -- yes, I think particularly</p> <p>4 long-term performance.</p> <p>5 Q. As a portfolio manager, did you</p> <p>6 actually execute trades?</p> <p>7 A. At what point in time?</p> <p>8 Q. At what point in time is that?</p> <p>9 A. I'm asking you.</p> <p>10 Q. At what point in time? In October of</p> <p>11 2001.</p> <p>12 A. The answer is yes, I did transact.</p> <p>13 What we started doing, I believe it</p> <p>14 was in 2001, is trying rather than having the</p> <p>15 portfolio managers transact to have the managers</p> <p>16 transact. So I think in the beginning of 2001</p> <p>17 we were trying to follow those trades all</p> <p>18 through the traders.</p> <p>19 But the practically reality is if the</p> <p>20 trader wasn't there, you'd do it yourself.</p> <p>21 Q. So in October of 2001, would it be</p> <p>22 fair to say that most of the trades were</p> <p>23 executed by the traders?</p> <p>24 A. Yeah, that's fair.</p> <p>25 Q. What did a trader have to do to</p>  | <p>1 system. They're referred to as FITS, F-I-T-S,</p> <p>2 would enter a transaction on the system, and</p> <p>3 then that would -- it was a work flow kind of</p> <p>4 product. So it would go from your station once</p> <p>5 you're finished inputting the trade details, it</p> <p>6 would go to the trader, and the trader would</p> <p>7 take it from there.</p> <p>8 Q. What trade details did you have to</p> <p>9 enter when you were trying to place an order?</p> <p>10 A. That's one.</p> <p>11 The other method is to stand up and</p> <p>12 talk to the trader and say let's do this.</p> <p>13 Typically it was entered it in the</p> <p>14 FITS system. The details would be details of</p> <p>15 what the security was, coupon maturity, whether</p> <p>16 it's a treasury, an agency or a mortgage or</p> <p>17 corporate. So the name of the security, the</p> <p>18 interest rate that's on the note and the</p> <p>19 maturity of note.</p> <p>20 You'd have to list the quantity.</p> <p>21 You'd have to list whether you're buying or</p> <p>22 selling. You'd have to list when you wanted the</p> <p>23 trade to settle. It was like it could settle</p> <p>24 today, it could settle tomorrow, or it could</p> <p>25 settle trade date plus two or five. So that was</p> |

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| <p>1 another variable. I think that's it.</p> <p>2 We may -- well, you had to list the</p> <p>3 name of the portfolio that the trade was going</p> <p>4 to be for.</p> <p>5 Q. Did any of this information that you</p> <p>6 just mentioned automatically appear in the FITS</p> <p>7 system?</p> <p>8 A. Well, if it's a buy transaction, not</p> <p>9 likely. If it's a sell transaction, it may</p> <p>10 have. You may pull up the security holding, but</p> <p>11 I don't recall.</p> <p>12 Q. You said that sometimes you would</p> <p>13 provide verbal orders, is that correct,</p> <p>14 sometimes you would --</p> <p>15 A. Yes.</p> <p>16 Q. Why would you provide a verbal order</p> <p>17 rather than entering an order into the FITS</p> <p>18 system?</p> <p>19 A. Well, it was more likely to happen,</p> <p>20 for example, buying corporate securities. New</p> <p>21 issue corporates might not even be set up in the</p> <p>22 system until you bought it, so the system</p> <p>23 wouldn't recognize it.</p> <p>24 And if it's a new issue corporate, you</p> <p>25 also might get less than 100 percent of what you</p>  | <p>1 I mean, I think it's a tough type of</p> <p>2 software to build. I admire the fact that they</p> <p>3 were able to build it and get it to work. But</p> <p>4 those things have become much more sophisticated</p> <p>5 since then, and they're still pretty --</p> <p>6 But it was an attempt to get orders to</p> <p>7 go through the different stations that -- get</p> <p>8 all the people that need to work on processing a</p> <p>9 trade, which is more than just the portfolio</p> <p>10 manager and the trader, to get all that</p> <p>11 centralized into one piece of software so it</p> <p>12 would go from one station to the next because</p> <p>13 each station, certain inputs have to be --</p> <p>14 certain functions have to be performed for that</p> <p>15 trade before it's kind of completed.</p> <p>16 Q. How would the trader know that you had</p> <p>17 inputted an order into the FITS system? Is</p> <p>18 there any sort of notification that the trader</p> <p>19 would receive?</p> <p>20 A. It's two questions.</p> <p>21 Your first question is I don't know.</p> <p>22 But the second is yes, I'm sure there</p> <p>23 was some kind of notification that came up to</p> <p>24 him. I think it was the form of a blotter --</p> <p>25 Q. Okay.</p> |
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| <p>1 ask for. So you might ask for 50 million, but</p> <p>2 they might only allocate to you 20 million.</p> <p>3 So the process is one of instead of</p> <p>4 entering 50 million on a ticket and then having</p> <p>5 to change the entry on FITS, and it might not</p> <p>6 even exist on FITS get, so that might not even</p> <p>7 be possible, you discuss it with a trader, and</p> <p>8 they take down the details of the interest, say</p> <p>9 50 million of a security, and he does his best</p> <p>10 to get 50 million of that security. But he may</p> <p>11 well not.</p> <p>12 Q. Would there be any other situations in</p> <p>13 which you would more likely get a verbal rather</p> <p>14 than an electronic order?</p> <p>15 A. Typically it was when we were working</p> <p>16 as a group, putting a trade together.</p> <p>17 Q. Could you use the FITS system to</p> <p>18 actually execute trades?</p> <p>19 A. No.</p> <p>20 Q. Was it more of a management -- trade</p> <p>21 order management system?</p> <p>22 MR. THEODOROU: Objection.</p> <p>23 A. I'd say no. I think I would</p> <p>24 characterize it as a work flow engine. Pretty</p> <p>25 crude.</p> | <p>1 A. -- that would have a list of the</p> <p>2 trades that were outstanding that he needed to</p> <p>3 work on or she needed to work on.</p> <p>4 Q. When you gave a verbal order to the</p> <p>5 trader, would you also enter any information</p> <p>6 into the FITS system at any time?</p> <p>7 MR. THEODOROU: Objection.</p> <p>8 A. Yes.</p> <p>9 Q. And when would you do that?</p> <p>10 MR. THEODOROU: Objection.</p> <p>11 A. As soon as you could.</p> <p>12 MS. WILLIAMS: I'd like to have</p> <p>13 this marked as Exhibit 4.</p> <p>14 (Exhibit 4 marked</p> <p>15 for identification)</p> <p>16 BY MS. WILLIAMS:</p> <p>17 Q. Do you recognize this document, sir?</p> <p>18 A. Yes.</p> <p>19 Q. What is it?</p> <p>20 A. This is a schema, if that's a word.</p> <p>21 This is an architectural drawing of our trading</p> <p>22 desk, the high grade trading desk and part of</p> <p>23 the trading floor at MFS on the 23rd floor.</p> <p>24 Q. And would you agree that this was the</p> <p>25 layout of the desks in October of 2001?</p>   |

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| <p>1 A. Yes.</p> <p>2 Q. Where is your work station on this</p> <p>3 exhibit?</p> <p>4 A. The top right.</p> <p>5 Q. I see your name next to a circle that</p> <p>6 says 241. Is that what you're referring to when</p> <p>7 you say "the top right"?</p> <p>8 A. Yeah, yes.</p> <p>9 Q. Who sat on your left at Station 242?</p> <p>10 A. Rick Smith.</p> <p>11 Q. And did anyone sit in front of you at</p> <p>12 Station 240?</p> <p>13 A. No. That was an open station for</p> <p>14 analysts to use.</p> <p>15 MR. THEODOROU: For clarification,</p> <p>16 Mr. Smith would have been to his right facing</p> <p>17 240.</p> <p>18 MS. WILLIAMS: Towards the 241,</p> <p>19 right.</p> <p>20 MR. THEODOROU: I know you like</p> <p>21 precision and details.</p> <p>22 MS. WILLIAMS: I don't know which</p> <p>23 way you're facing, but assuming you're facing</p> <p>24 towards the desk, yes, to your right.</p> <p>25 Q. So then following up on that, if</p>                       | <p>1 MS. WILLIAMS: I understand the</p> <p>2 record reflects that.</p> <p>3 BY MS. WILLIAMS:</p> <p>4 Q. When you were seated, could you see</p> <p>5 Mr. Smith?</p> <p>6 A. Yes and no. We are partially</p> <p>7 obstructed by the computer monitors that we had</p> <p>8 and piles of research.</p> <p>9 Q. And so those monitors would have set</p> <p>10 in what I see is a square between you and</p> <p>11 Mr. Smith; is that correct?</p> <p>12 A. Yeah, yes.</p> <p>13 Q. Were there monitors -- did you have</p> <p>14 monitors and Mr. Smith also had monitors that</p> <p>15 were sitting on this square?</p> <p>16 A. I don't recall. I believe -- I don't</p> <p>17 actually recall. I think I had three monitors,</p> <p>18 one to my right, one to my left and maybe one</p> <p>19 more kind of in front of me.</p> <p>20 He also had two or three monitors, so</p> <p>21 I imagine -- well, I don't recall exactly how he</p> <p>22 was configured, but likelihood, he had one to</p> <p>23 his right and left also. I can't remember how</p> <p>24 he was set up.</p> <p>25 Q. When Mr. Smith was on the phone, could</p>                              |
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| <p>1 you're facing towards the desk, what was to your</p> <p>2 left?</p> <p>3 A. Now you're killing me. Station 253.</p> <p>4 Q. Okay. Is there anything between your</p> <p>5 station and Station 253?</p> <p>6 A. Yes.</p> <p>7 Q. What is between your station and</p> <p>8 Station 253?</p> <p>9 A. There was an aisleway. I think there</p> <p>10 was a potted plant too.</p> <p>11 Q. Approximately how much -- what was the</p> <p>12 distance between you and Mr. Smith?</p> <p>13 MR. THEODOROU: Objection.</p> <p>14 A. Roughly the distance between the two</p> <p>15 of us today, four or five feet.</p> <p>16 Q. Sure. About four feet?</p> <p>17 MR. THEODOROU: Objection.</p> <p>18 MR. SHOPE: Well, objection.</p> <p>19 MR. THEODOROU: Four or five feet.</p> <p>20 MR. SHOPE: I would say -- I would</p> <p>21 say five.</p> <p>22 MS. WILLIAMS: I would say three,</p> <p>23 but that's fine.</p> <p>24 MR. THEODOROU: The testimony is</p> <p>25 four or five feet.</p> | <p>1 you typically hear him?</p> <p>2 MR. THEODOROU: Objection.</p> <p>3 A. Sometimes yes, sometimes no depending</p> <p>4 on how loud he was speaking, whether he was</p> <p>5 facing my direction or facing the other</p> <p>6 direction possibly.</p> <p>7 Q. When you and Mr. Smith communicated</p> <p>8 from your stations, how would you typically</p> <p>9 communicate?</p> <p>10 A. Typically I think we'd have to push</p> <p>11 our chairs back a little bit so we'd kind of get</p> <p>12 a little bit away from the clutter, kind of look</p> <p>13 around the screens a little bit.</p> <p>14 Q. Do you recall if Mr. Smith was at work</p> <p>15 on October 31, 2001?</p> <p>16 A. Yes.</p> <p>17 Q. Okay. Now you briefly talked about</p> <p>18 the monitors on your desk, and you said you had</p> <p>19 three monitors.</p> <p>20 Could you just describe what your work</p> <p>21 space looked like on October 31, 2001?</p> <p>22 A. The best I recall, I had one large</p> <p>23 monitor on my left. So starting at the outside</p> <p>24 of the desk, there'd be an inbox, maybe piled</p> <p>25 with, you know, research and maybe a pile of</p> |

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| <p>1 computer reports that would show portfolio<br/>2 holding information, sort of portfolio work<br/>3 product stuff.<br/>4 Then along that side a big monitor.<br/>5 Then a small private phone.<br/>6 In front of me was sort of a sloped<br/>7 surface that had a telephone with many lines in<br/>8 it, kind of built into the furniture.<br/>9 Somewhere in front of me, kind of<br/>10 dangling off in front of that work space was the<br/>11 phone that worked with that phone bank that was<br/>12 built in with all the little buttons.<br/>13 Up from that sloped surface there was<br/>14 a shelf. I don't recall, but that was the place<br/>15 to put another monitor.<br/>16 To my right was another large monitor.<br/>17 And then on the edge of the space,<br/>18 closest to the windows there, another pile of<br/>19 research, probably one or two feet deep of just<br/>20 paper.<br/>21 Q. What did you keep on the monitors?<br/>22 MR. THEODOROU: Objection.<br/>23 A. Typically?<br/>24 Q. Typically.<br/>25 A. Typically I had a portfolio analytic</p>  | <p>1 But I was interested in spreads, so I used to<br/>2 graph real-time spreads, say, between two-year<br/>3 treasuries and five-year treasuries, and then<br/>4 another box might be five-year treasuries versus<br/>5 10-year treasuries. And then I might look at<br/>6 a -- or I definitely looked at graphs of 10-year<br/>7 treasuries versus 30-year treasuries.<br/>8 So you got a sense of how the yield<br/>9 spread relationships across different maturities<br/>10 is shifting during the course of the day or over<br/>11 time.<br/>12 So that type of information you could<br/>13 put up. It is a little bit more creative than<br/>14 just looking at a ticker of 10-year prices or<br/>15 yields or 30-year prices or yields and then in<br/>16 your head kind of --<br/>17 It's interesting when you graph<br/>18 primarily because it gives you three months of<br/>19 history or six months of history, so you also<br/>20 get a sense of where we've been and what's the<br/>21 overall trend in some of those spread<br/>22 relationships. So Reuters is very useful for<br/>23 that sort of thing.<br/>24 Q. Was there any news information<br/>25 available on your Reuters screen?</p> |
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| <p>1 tool that I used Yield Book. I used it a lot.<br/>2 Or Microsoft type software for running Excel, if<br/>3 I was doing Excel kind of spreadsheets.<br/>4 I would have typically a Bloomberg<br/>5 screen up because Bloomberg was a great source<br/>6 of sort of ticker information on a very wide<br/>7 array of different markets that you might be<br/>8 interested in following.<br/>9 And typically another market data<br/>10 source, like Reuters. Reuters was great because<br/>11 you could have a lot of flexibility in how to<br/>12 configure it. So you could put up more live<br/>13 data feeds, sort of monitor them in a more<br/>14 creative way than looking at a ticker. So you<br/>15 could look at spread graphs.<br/>16 Q. Did you -- when you say you could<br/>17 configure it, you could determine what kind of<br/>18 information that Reuters had available, you<br/>19 could determine which of that information you<br/>20 wanted on your screen?<br/>21 A. Exactly.<br/>22 Q. What kind of information did you have<br/>23 typically on your Reuters screen?<br/>24 MR. THEODOROU: Objection.<br/>25 A. Sitting here now, I don't remember.</p> | <p>1 A. Yes.<br/>2 Q. You mentioned that there was usually<br/>3 scrolling news? I don't know if I'm -- how did<br/>4 the news information appear on screen?<br/>5 A. There would be a line, a news story<br/>6 with a time stamp on it. And as a new story<br/>7 came in, it would maybe move down, and then the<br/>8 new one would appear above it so that you could<br/>9 have a panel, a little window, and you could<br/>10 have as much of it as you want. You could have<br/>11 it fill a whole computer screen.<br/>12 So you could look at essentially many<br/>13 lines, you know, say 30 lines of this<br/>14 information, or you could look at three lines of<br/>15 this information in a smaller window.<br/>16 You know, the Reuters screen gives you<br/>17 the flexibility to configure it any way you want<br/>18 to look at it.<br/>19 MS. WILLIAMS: We have to change<br/>20 the tape.<br/>21 THE VIDEOGRAPHER: This marks the<br/>22 end of videotape number one in the deposition of<br/>23 Steven Northern.<br/>24 Going off the record, 11:27 a.m.<br/>25 (Discussion off the record)</p>  |

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|---|--|
| <p>1 THE VIDEOGRAPHER: This marks the</p> <p>2 beginning of videotape number two in the</p> <p>3 deposition of Steven Northern.</p> <p>4 On the record, 11:36 a.m.</p> <p>5 BY MS. WILLIAMS:</p> <p>6 Q. Mr. Northern, before we changed tapes I</p> <p>7 was asking you about the Reuters screen, and you</p> <p>8 mentioned you could have more of the news -- you</p> <p>9 had the ability to show more lines of the news</p> <p>10 than others.</p> <p>11 And I was wondering, typically how</p> <p>12 much would you have viewable on your screen of</p> <p>13 the Reuters news?</p> <p>14 A. A small amount.</p> <p>15 Q. Okay.</p> <p>16 A. I'm much more interested in, like we</p> <p>17 talked about different charts of spread</p> <p>18 relationships, that sort of a thing from</p> <p>19 Reuters. Reuters is powerful because you could</p> <p>20 graph things on. I could get basic tickers off</p> <p>21 of Bloomberg.</p> <p>22 Q. In the screen that you had that showed</p> <p>23 the Reuters news, would it show different</p> <p>24 headlines, or did it show the substance of the</p> <p>25 news story as well?</p>                     | <p>1 page with a fairly standard selection of sort of</p> <p>2 benchmark securities and show constant updates</p> <p>3 of price and yield levels that they were priced</p> <p>4 at in the market.</p> <p>5 Bloomberg had had a ticker, as I</p> <p>6 remember, across the bottom of the page of the</p> <p>7 USD page. I believe there was also a ticker on</p> <p>8 the page.</p> <p>9 Q. On your Bloomberg terminal, did you</p> <p>10 have access to Bloomberg E mail?</p> <p>11 A. Yes.</p> <p>12 Q. How often did you use Bloomberg E</p> <p>13 mail?</p> <p>14 MR. THEODOROU: Objection.</p> <p>15 A. I was not a big user of Bloomberg E</p> <p>16 mail. I tried to funnel all my E mails through</p> <p>17 my Outlook, my Microsoft Outlook E mail account.</p> <p>18 Q. Was that an MFS account?</p> <p>19 A. Yes.</p> <p>20 Q. Could you forward the Bloomberg E</p> <p>21 mails to the MFS account?</p> <p>22 A. I wasn't a big user of it. I think it</p> <p>23 did have that functionality. I just didn't use</p> <p>24 that system much. So I think I don't know.</p> <p>25 Sorry.</p> |
| Page 91   | Page 93  |
| <p>1 A. As I recall, the tickers are just the</p> <p>2 headline.</p> <p>3 Q. Okay.</p> <p>4 A. You could access it. If you could see</p> <p>5 quick enough what the index number was, you</p> <p>6 know, story 831, then you could just type in</p> <p>7 story 831 and look it up and see the story. So</p> <p>8 there was a story behind the headline, but the</p> <p>9 trick was they kind of move fast, so you'd have</p> <p>10 to be actually paying attention to know what the</p> <p>11 story number was or something.</p> <p>12 Q. Could you click on the headline and</p> <p>13 display the story?</p> <p>14 A. I don't think it had that capability.</p> <p>15 I think you needed to know the story number.</p> <p>16 Q. You mentioned that you also had a --</p> <p>17 A. But, you know, it's entirely possible.</p> <p>18 I don't remember.</p> <p>19 Q. You mentioned you also had a Bloomberg</p> <p>20 terminal?</p> <p>21 A. Yes.</p> <p>22 Q. What information did you typically</p> <p>23 display on the Bloomberg terminal?</p> <p>24 A. As I recall, Bloomberg had a USD page</p> <p>25 which was a standard format, government agency</p> | <p>1 Q. That's okay.</p> <p>2 Did you have access to the Dow Jones</p> <p>3 on any of your monitoring screens?</p> <p>4 A. The Dow Jones news service?</p> <p>5 Q. Yes.</p> <p>6 A. I don't remember which news services</p> <p>7 we had access to.</p> <p>8 Q. You mentioned that you had --</p> <p>9 A. The Dow is the main one, right? I</p> <p>10 don't know what feed that Reuters had or</p> <p>11 Bloomberg had. I think they were composites of</p> <p>12 many news services.</p> <p>13 Q. You mentioned having a few phones on</p> <p>14 your desk. And first I want to talk about what</p> <p>15 you call the small private phone.</p> <p>16 What was your number to that private</p> <p>17 phone in October 2001?</p> <p>18 A. As best I can remember, it was</p> <p>19 Extension 5887.</p> <p>20 Q. Was that a direct line to you?</p> <p>21 A. It was a regular phone, so it was my</p> <p>22 assigned phone.</p> <p>23 Q. Now, what about these phone lines that</p> <p>24 you said sat in front of you, what were those --</p> <p>25 what did those go to?</p>                        |

24 (Pages 90 to 93)

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|--|--|
| <p>1 A. That was a console that had two</p> <p>2 different sets of phones.</p> <p>3 As I remember, one was direct, as you</p> <p>4 mentioned, to different brokerages, primary</p> <p>5 dealers. And the other was a bank of phone</p> <p>6 lines that sort of scrolled.</p> <p>7 And I think the different groups, I</p> <p>8 think there were maybe five in a column and each</p> <p>9 sort of department had maybe a column that was</p> <p>10 their primary number. But they would -- we</p> <p>11 could use any of them, really.</p> <p>12 But I think if our numbers were</p> <p>13 lighting up, I think, you know, we would be the</p> <p>14 first ones to -- one of the trading assistants</p> <p>15 would be there to pick it up for us.</p> <p>16 Q. Let me ask first about these direct</p> <p>17 two phones that were direct to primary dealers.</p> <p>18 Which primary dealers did you have</p> <p>19 direct lines to in October of 2001?</p> <p>20 A. The ones that we did the most business</p> <p>21 with, Merrill Lynch, Goldman Sachs, JP Morgan,</p> <p>22 UBS. The usual suspects.</p> <p>23 Q. So what would happen when you picked</p> <p>24 up one of these dedicated lines to a primary</p> <p>25 dealer?</p> | <p>1 outside wanted to call the fixed income, high</p> <p>2 grade desk, they would use that telephone from</p> <p>3 an outside telephone.</p> <p>4 Q. Besides this work station that we see</p> <p>5 on Exhibit 4, did you have any other work space</p> <p>6 at MFS?</p> <p>7 A. Well, yes.</p> <p>8 Q. Tell me about this other work space</p> <p>9 that you had at MFS.</p> <p>10 A. I had an office off the end of the</p> <p>11 trading room.</p> <p>12 Q. Was it on the same floor as this high</p> <p>13 grade trading desk?</p> <p>14 A. Yes.</p> <p>15 Q. What floor was that?</p> <p>16 A. The 23rd floor.</p> <p>17 Q. Did you share your office with anyone?</p> <p>18 A. No.</p> <p>19 Q. Were there any phone lines available</p> <p>20 in your office?</p> <p>21 A. My office had the same phone --</p> <p>22 exactly the same set of phones that -- the</p> <p>23 private phone and the phone bank. So I could do</p> <p>24 the same work essentially in my office.</p> <p>25 Q. Did you have the same --</p>  |
| Page 95  | Page 97  |
| <p>1 A. My understanding is it had a little</p> <p>2 light lights up on their end. So if they pick</p> <p>3 it up, a little light lights up on our end.</p> <p>4 Q. What, if any, dialing did you have to</p> <p>5 do?</p> <p>6 A. Direct line. There is no dialing.</p> <p>7 Some of them may have been sort of an</p> <p>8 automated speed dial. It might not have been</p> <p>9 actually a dedicated phone line so much as maybe</p> <p>10 it was built-in speed dial capability.</p> <p>11 But either way, you just hit the</p> <p>12 button, and it lights up at the other end so</p> <p>13 they know to pick up the telephone.</p> <p>14 Q. If, and I'll give an example, you pick</p> <p>15 up the Merrill Lynch dedicated line, could you</p> <p>16 get any other primary dealer on that particular</p> <p>17 line?</p> <p>18 A. No.</p> <p>19 Q. Now, you mentioned that there were</p> <p>20 also lines for your desk; is that right?</p> <p>21 A. We had a bank of regular phone lines</p> <p>22 with assigned phone numbers.</p> <p>23 Q. Could external calls come in on those</p> <p>24 lines?</p> <p>25 A. Yeah, absolutely. If someone from the</p>  | <p>1 A. Though --</p> <p>2 Q. -- private phone number?</p> <p>3 You said there was a direct phone to</p> <p>4 you on the work station, Extension 5887. Did</p> <p>5 you have that same phone number in your office?</p> <p>6 A. Yes.</p> <p>7 Q. What, if any, voicemail capability did</p> <p>8 you have on any of the phones?</p> <p>9 A. That telephone had a voicemail system</p> <p>10 on it, so if you didn't pick up, someone could</p> <p>11 leave a message for you.</p> <p>12 Q. If I could refer you back to</p> <p>13 Exhibit 4. Next to Space 242 -- actually, right</p> <p>14 next to Space 243 I see the word Kennedy. Whose</p> <p>15 space is 243?</p> <p>16 A. David Kennedy.</p> <p>17 Q. And approximately how far was from</p> <p>18 Kennedy's work space from your work space?</p> <p>19 A. I think maybe the distance between me</p> <p>20 and John.</p> <p>21 Q. Approximately how many feet?</p> <p>22 MR. THEODOROU: Which John? John</p> <p>23 Shope or John Rossetti?</p> <p>24 THE WITNESS: Mr. Rossetti.</p> <p>25 A. I'd say eight to 10 feet for a number.</p> |

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|---|--|
| <p>1 Q. When you were seated at your work<br/>2 station, could you see Mr. Kennedy if he was<br/>3 seated at his work station?<br/>4 A. Again, the desks were piled with<br/>5 clutter, mostly screens and inboxes and<br/>6 research. So if he was sitting forward, you<br/>7 know, closer to the -- more tucked in towards<br/>8 the phones, I probably wouldn't see him. If he<br/>9 slid back, we could talk.<br/>10 Q. If you wanted to talk to Mr. Kennedy<br/>11 in 2001, what was your typical practice? What<br/>12 would you do?<br/>13 A. I'd get up and walk over there and<br/>14 talk to him.<br/>15 Q. Do you know if Mr. Kennedy was at work<br/>16 on October 31, 2001?<br/>17 A. Yes.<br/>18 Q. Now, on this Exhibit 4, next to<br/>19 Mr. Kennedy at 243 I see a 265 and the word<br/>20 Kurinsky. Do you see that?<br/>21 A. Yes.<br/>22 Q. Who sat at Station 265 in October of<br/>23 2001?<br/>24 A. Jeffrey Kurinsky.<br/>25 Q. Approximately how far was</p> | <p>1 really to try to keep it as open as possible so<br/>2 we could see one another. But the reality of<br/>3 putting these screens and the piles of stuff<br/>4 that accumulated on trading desks, that often<br/>5 people couldn't see one another.<br/>6 So if he's sitting, I'm sitting, I<br/>7 think it would be kind of hard to see unless we<br/>8 stood up.<br/>9 Q. When you wanted to talk to<br/>10 Mr. Cadogan, what did you typically do?<br/>11 MR. THEODOROU: Objection.<br/>12 A. I'd stand up. I could address him.<br/>13 Q. Could you hear Mr. Cadogan if he was<br/>14 on the phone if you were seated at your work<br/>15 station?<br/>16 A. I could probably -- I could hear him,<br/>17 but not clearly. I think he was just far enough<br/>18 away that I could hear that he was on the phone.<br/>19 Q. Was Mr. Cadogan at work on October 31,<br/>20 2001?<br/>21 A. Yes.<br/>22 Q. I see next to Mr. Cadogan at 239 the<br/>23 word Mayo. Do you see that?<br/>24 A. Yes.<br/>25 Q. And who sat at position 239 in 2001?</p> |
| Page 99   | Page 101   |
| <p>1 Mr. Kurinsky's work station from your work<br/>2 station 241?<br/>3 A. Add another six feet.<br/>4 Q. About approximately 14 feet or so?<br/>5 MR. THEODOROU: Objection.<br/>6 BY MS. WILLIAMS:<br/>7 Q. I was just adding the eight feet from<br/>8 Mr. Kennedy with the approximately six more<br/>9 feet.<br/>10 A. We're guessing. I don't know.<br/>11 Q. Okay.<br/>12 A. I think 15 feet.<br/>13 Q. Do you know, was Mr. Kurinsky at work<br/>14 on October 31, 2001?<br/>15 A. Yes.<br/>16 Q. Where did Mr. Cadogan sit in<br/>17 October of 2001?<br/>18 A. If you want to refer to the diagram,<br/>19 it's location 238.<br/>20 Q. When you were seated at your work<br/>21 station, could you see Mr. Cadogan?<br/>22 A. Same problem. I think with difficulty<br/>23 because of the clutter on the desks. Could I<br/>24 see him if he was standing up? Yeah.<br/>25 You know, the purpose of the desk is</p>  | <p>1 A. Aaron Mayo.<br/>2 Q. Was Mr. Mayo in the office on<br/>3 October 31, 2001?<br/>4 A. I don't recall.<br/>5 Q. I want to refer you to Station 264 on<br/>6 Exhibit 4. Do you see that?<br/>7 A. Yes.<br/>8 Q. Who sat at Station 264 in 2001?<br/>9 A. Peter Vaream.<br/>10 Q. Was Mr. Vaream at work on October 31,<br/>11 2001?<br/>12 A. Yes.<br/>13 Q. What was located at position 266 on<br/>14 this exhibit?<br/>15 A. That was an open work station reserved<br/>16 for our credit analysts to do some work if they<br/>17 wanted to come to the trading desk.<br/>18 Q. I see the word Bloomberg. Do you know<br/>19 what, if anything, that signifies?<br/>20 A. There was probably a Bloomberg<br/>21 terminal there for them to use. I guess they<br/>22 didn't have them if their office, so if they<br/>23 wanted to come in and use a Bloomberg, it's<br/>24 relatively expensive, so I had a couple of<br/>25 extras, so people could come and use it there on</p>   |

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|--|--|
| <p>1 the trading desk.</p> <p>2 Q. And what about position 268, what was</p> <p>3 that position used for?</p> <p>4 A. It looks like the same thing, an extra</p> <p>5 open station for primarily our credit analysts</p> <p>6 to use. And that would be the availability</p> <p>7 there of the Bloomberg. They could use the</p> <p>8 Bloomberg for -- as an E mail system. They</p> <p>9 could use it for research.</p> <p>10 Q. Were there any television monitors in</p> <p>11 or near your work area in October of 2001?</p> <p>12 A. Yes.</p> <p>13 Q. Where was the television monitor?</p> <p>14 A. There was a television monitor in back</p> <p>15 of Mr. Kennedy along that wall. And there was a</p> <p>16 second television monitor along the opposite</p> <p>17 wall, roughly behind station marked 233 there.</p> <p>18 Q. Okay. What did the television</p> <p>19 monitors sit on?</p> <p>20 A. The monitors were -- they were hung</p> <p>21 from the wall, I believe, there in the ceiling.</p> <p>22 Q. From the ceiling?</p> <p>23 A. Well, yeah. They were up.</p> <p>24 Q. Higher than you were when you were</p> <p>25 seated?</p>     | <p>1 Q. Was it turned to a particular channel</p> <p>2 usually when it was on?</p> <p>3 A. You know, I don't recall.</p> <p>4 Q. Do you recall whether or not the</p> <p>5 television was turned on on October 31, 2001?</p> <p>6 A. I don't.</p> <p>7 Q. When did you first hear about Pete</p> <p>8 Davis?</p> <p>9 A. I don't recall.</p> <p>10 Q. Do you know how you first learned of</p> <p>11 Pete Davis?</p> <p>12 A. He worked -- yes is the answer.</p> <p>13 Q. How did you first learn about Pete</p> <p>14 Davis?</p> <p>15 A. He worked as an economist at Aubrey</p> <p>16 Langston, a dealer in Manhattan.</p> <p>17 Q. And how did you learn about Mr. Davis?</p> <p>18 A. He was introduced to me and to MFS by</p> <p>19 the person who covered us, a salesperson at</p> <p>20 Aubrey Langston.</p> <p>21 Q. What was that person's name?</p> <p>22 A. Boy, I don't remember.</p> <p>23 Q. And do you recall approximately what</p> <p>24 year this was?</p> <p>25 A. No. Approximately mid '90s, early</p> |
| Page 103   | Page 105   |
| <p>1 A. Oh, yeah. Just low enough so you</p> <p>2 could bump your head.</p> <p>3 Q. Could you see the monitor behind</p> <p>4 Mr. Kennedy if you turned around and if you were</p> <p>5 seated at your station?</p> <p>6 MR. THEODOROU: Objection.</p> <p>7 A. The television monitor was on a pivot,</p> <p>8 so if it was pivoted in my direction, I could</p> <p>9 sit and be able to watch it.</p> <p>10 The problem with the TVs is that</p> <p>11 they're relatively distracting for people. So</p> <p>12 if the volume was on loud enough from me to hear</p> <p>13 it from where I sat, it was maybe a distance of</p> <p>14 maybe here to the corner, it was likely going to</p> <p>15 be distracting other people, so we'd have it</p> <p>16 sort of turned way down.</p> <p>17 Q. When you say "turned way down," was it</p> <p>18 on mute typically?</p> <p>19 A. It was a little controversial, the TV.</p> <p>20 If you sat next to the TV, you wanted it either</p> <p>21 off or quiet or mute, so it was generally off or</p> <p>22 mute.</p> <p>23 Q. Did it have closed-caption capability</p> <p>24 on it?</p> <p>25 A. I don't know.</p> | <p>1 '90s. I don't remember.</p> <p>2 Q. When you say that Mr. Davis "was</p> <p>3 introduced to us," what do you mean?</p> <p>4 A. MFS, the investment people at MFS.</p> <p>5 Q. What other investment people beside</p> <p>6 yourself was Mr. Davis introduced to?</p> <p>7 A. I don't recall. Oh, I'm sorry. I've</p> <p>8 actually been thinking of a different person.</p> <p>9 You have to back up a few questions.</p> <p>10 Q. Okay.</p> <p>11 A. I totally apologize. I'm actually</p> <p>12 thinking of the person who introduced me to</p> <p>13 Mr. Davis.</p> <p>14 Q. Let me back up.</p> <p>15 How did you first learn about</p> <p>16 Mr. Davis?</p> <p>17 A. I was introduced to Mr. Davis by Bob</p> <p>18 Faulkner.</p> <p>19 Q. Who is Mr. Faulkner?</p> <p>20 A. Bob Faulkner was an economist at</p> <p>21 Aubrey Langston.</p> <p>22 Q. So Mr. Faulkner introduced you to</p> <p>23 Mr. Davis some time in the mid '90s; is that</p> <p>24 right?</p> <p>25 MR. THEODOROU: Objection.</p>              |

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|--|---|
| <p>1 A. I don't recall when.</p> <p>2 Q. Okay. So when you referenced the mid</p> <p>3 '90s before, what were you referring to?</p> <p>4 A. I was referring to Bob Faulkner at</p> <p>5 Aubrey Langston.</p> <p>6 Q. And that's when you met Mr. Faulkner?</p> <p>7 I'm just trying to figure out what the mid '90s</p> <p>8 referred to.</p> <p>9 A. I was first introduced to Mr. Faulkner</p> <p>10 mid to early '90s.</p> <p>11 Q. Okay.</p> <p>12 A. He is the one who introduced me to</p> <p>13 Mr. Davis. It was subsequent to that.</p> <p>14 Q. And how did Mr. Faulkner introduce you</p> <p>15 to Mr. Davis?</p> <p>16 A. I don't recall.</p> <p>17 Q. What did Mr. Faulkner tell you about</p> <p>18 Mr. Davis, if anything?</p> <p>19 A. I don't recall specifically, but I</p> <p>20 think he mentioned -- well, as best I can</p> <p>21 remember, he described that Mr. Davis was a</p> <p>22 Washington consultant and had a small practice.</p> <p>23 And they were clients of him, and he thought</p> <p>24 that we might also find Mr. Davis to be useful.</p> <p>25 Q. When you say "they were clients," is</p> | <p>1 analyst was to try to get a trial service. So</p> <p>2 we set up a trial service where we got his E</p> <p>3 mails or faxes for a period of time.</p> <p>4 Q. When you say "we got his E mails or</p> <p>5 faxes," who's the we?</p> <p>6 A. MFS.</p> <p>7 Q. Who at MFS received Mr. Davis's E</p> <p>8 mails and faxes during this trial service?</p> <p>9 A. I don't remember.</p> <p>10 Q. Did you receive the E mails and faxes?</p> <p>11 A. Yes.</p> <p>12 Q. Do you believe other people at MFS did</p> <p>13 as well?</p> <p>14 A. I believe so.</p> <p>15 Q. How long was the trial service?</p> <p>16 A. I don't remember.</p> <p>17 Q. What happened after the trial service?</p> <p>18 A. At some point in time we -- we made</p> <p>19 the decision in the High Grade Group to try him</p> <p>20 for a year.</p> <p>21 He had an annual fee, I believe, and</p> <p>22 we had him come up and -- actually, we had him</p> <p>23 come up right before we made the decision to</p> <p>24 hire him to meet with people in the Fixed Income</p> <p>25 Department. And I think it was after that</p> |
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| <p>1 it Aubrey Langston was clients of Mr. Davis?</p> <p>2 A. The point in time that Bob Faulkner</p> <p>3 introduced me to Mr. Davis, he had moved to</p> <p>4 Chicago and was working with a small hedge fund</p> <p>5 out there, so that hedge fund was a client of</p> <p>6 Mr. Davis's.</p> <p>7 Q. Do you recall the name of the hedge</p> <p>8 fund?</p> <p>9 A. I think it was Fanagammon, a name of</p> <p>10 that sort.</p> <p>11 Q. What about Sangammon, Sangamon,</p> <p>12 Sangamon Trading?</p> <p>13 A. You know, that sounds familiar. I</p> <p>14 don't remember. I thought it sound started with</p> <p>15 an F.</p> <p>16 Q. What was your first contact with</p> <p>17 Mr. Davis?</p> <p>18 A. I don't recall.</p> <p>19 Q. Do you recall if you contacted him?</p> <p>20 A. I don't recall.</p> <p>21 Q. Do you have any recollection -- what's</p> <p>22 your first recollection of Mr. Davis, of you</p> <p>23 communicating with Mr. Davis?</p> <p>24 A. We communicated on the phone.</p> <p>25 My practice with that sort of an</p>   | <p>1 meeting that we made a decision to try him for a</p> <p>2 year.</p> <p>3 Q. Do you recall when Mr. Davis came to</p> <p>4 meet with the people in the Fixed Income</p> <p>5 Department?</p> <p>6 A. No.</p> <p>7 Q. Do you recall who was present at that</p> <p>8 meeting?</p> <p>9 A. I remember my boss at the time, Les</p> <p>10 Namberg, N-A-M-B-E-R-G, was there. Les was</p> <p>11 running the Fixed Income Department prior to</p> <p>12 Joan Batchelder, and he was ultimately going to</p> <p>13 sign off on the decision.</p> <p>14 Q. Do you recall if there were any other</p> <p>15 portfolio managers present at the meeting?</p> <p>16 A. There were.</p> <p>17 Q. Do you know who?</p> <p>18 A. I don't remember.</p> <p>19 Q. Do you recall anything that was</p> <p>20 discussed at that meeting?</p> <p>21 A. No.</p> <p>22 Q. Do you recall if --</p> <p>23 A. We did discuss his background. He had</p> <p>24 introduced himself because we didn't know who</p> <p>25 this fellow was.</p>  |

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| <p>1 Q. Okay. Do you recall what Mr. Davis<br/>2 said about his background?<br/>3 A. I recall that he had worked on Capitol<br/>4 Hill. He had worked for Alice Rivlin while she<br/>5 had headed up, I guess it's the Congressional<br/>6 Budget office. It's under a different name now.<br/>7 He worked for, I believe, Pete Domenici. And I<br/>8 believe he also worked for Democrats on the<br/>9 Hill.<br/>10 After that he worked for a Wall Street<br/>11 house, I can't remember which, but he was their<br/>12 Washington analyst.<br/>13 Q. Who was Pete Dominici?<br/>14 A. Senator, Republican Senator.<br/>15 Q. What, if any, discussion did you have<br/>16 regarding the types of information that<br/>17 Mr. Davis could provide to MFS?<br/>18 MR. SHOPE: I'm sorry. Could I<br/>19 have that question reread?<br/>20 (Record read)<br/>21 MR. THEODOROU: Objection.<br/>22 MR. SHOPE: And this was at the<br/>23 meeting --<br/>24 MS. WILLIAMS: At the meeting at<br/>25 MFS.</p> | <p>1 A. I think I have seen it before.<br/>2 Q. When did you see this document?<br/>3 A. At my SEC deposition in 2001,<br/>4 December 2001.<br/>5 Q. Do you recall seeing this document<br/>6 prior to October 31, 2001?<br/>7 A. No.<br/>8 Q. Do you recall seeing any brochures<br/>9 from Davis Capital prior to October 31, 2001?<br/>10 A. Marketing brochures or biographical<br/>11 brochures?<br/>12 Q. First let's go with marketing<br/>13 brochures. Do you recall seeing any of those<br/>14 prior to October --<br/>15 A. No.<br/>16 Q. Do you recall seeing any biographical<br/>17 information in the form of a document about<br/>18 Mr. Davis prior to October 31, 2001?<br/>19 A. No.<br/>20 Q. Do you know if Mr. Davis or if Davis<br/>21 Capital had a web site prior to October 31,<br/>22 2001?<br/>23 A. Yes.<br/>24 Q. Did you ever visit that web site prior<br/>25 to October 31, 2001?</p>  |
| Page 111  | Page 113  |
| <p>1 MR. SHOPE: That precedes the<br/>2 engagement of Mr. Davis?<br/>3 MS. WILLIAMS: Yes.<br/>4 MR. SHOPE: Okay.<br/>5 A. I don't remember.<br/>6 Q. Do you remember if that topic was<br/>7 discussed?<br/>8 A. I don't remember.<br/>9 Q. What, if any, documents did Mr. Davis<br/>10 provide to the attendees at the meeting?<br/>11 A. I don't remember. I do remember he<br/>12 had no marketing or biographical information.<br/>13 He may have come with sample E mails. I think<br/>14 in those days it was faxes more than E mails.<br/>15 MS. WILLIAMS: I'd like to have<br/>16 this marked as Exhibit 5.<br/>17 (Exhibit 5 marked<br/>18 for identification)<br/>19 BY MS. WILLIAMS:<br/>20 Q. Let me know when you're finished<br/>21 reviewing it.<br/>22 A. You want me to read the whole thing?<br/>23 Q. No. I was going to ask you if you had<br/>24 seen this document before, and I didn't know if<br/>25 you had time to flip through it.</p>                                      | <p>1 A. Yes.<br/>2 Q. What did you review on that web site?<br/>3 A. I don't remember.<br/>4 Q. How often did you visit the web site?<br/>5 A. I think once.<br/>6 Q. And do you know why you visited the<br/>7 web site?<br/>8 A. Just to see if it was something that<br/>9 might be useful. I imagine once he set it up,<br/>10 he told us it was there, and I went to check it<br/>11 out.<br/>12 Q. Do you recall if you thought it was<br/>13 useful?<br/>14 MR. THEODOROU: Objection.<br/>15 A. Yep, yes.<br/>16 Q. Yes, you thought it was useful?<br/>17 A. No. Yes, I recall.<br/>18 Q. Okay. What did you think?<br/>19 A. No. The problem is there are just too<br/>20 many passwords, you know, and that was my<br/>21 problem. There are just too many web sites to<br/>22 go to and remember the password. It probably<br/>23 had some security, and you got to remember the<br/>24 web site, you got to remember the password, the<br/>25 ID, and I couldn't go to all these web sites.</p> |

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| <p style="text-align: right;">Page 114</p> <p>1 Q. Okay. So just to clarify, the web<br/>2 site was password protect?<br/>3 A. I'm just telling you in general why it<br/>4 was not my practice to go looking at information<br/>5 on web sites.<br/>6 Q. Okay.<br/>7 A. It's just way too overloaded with<br/>8 opportunities for digging for information in<br/>9 little web sites like this, and you have to draw<br/>10 the line somewhere.<br/>11 You have to understand, Goldman Sachs<br/>12 has a web site. JP Morgan has one. You know,<br/>13 they have every piece of research they've done<br/>14 in 20, 30 years, and they're pumping out<br/>15 100-page reports on a daily basis. So there's a<br/>16 limit to what you can do.<br/>17 Q. When you say Goldman Sachs had a web<br/>18 site, was there a password required for you to<br/>19 obtain certain information off of their web<br/>20 site?<br/>21 A. I don't recall specifically Goldman<br/>22 Sachs, but I think they're all protected.<br/>23 Q. When you went to the Davis Capital web<br/>24 site, what did you think about the web site?<br/>25 A. I don't remember specifically what I</p>   | <p style="text-align: right;">Page 116</p> <p>1 I can remember our credit analysts<br/>2 using him.<br/>3 After 9/11 there was an issue of<br/>4 airline bailout legislation. And we own a lot<br/>5 of airline mortgage bonds, so one of our<br/>6 analysts who followed that area was interested<br/>7 in, you know, the form the legislation might<br/>8 take, the probabilities of any legislation<br/>9 actually getting passed. And I do remember that<br/>10 he used Mr. Davis either as a source for<br/>11 information or to refer -- as a referral source<br/>12 for people that might have the information that<br/>13 would be interesting to the analysts. I wasn't<br/>14 directly involved in that, but I do remember it<br/>15 was an issue that fall.<br/>16 I used him for research. I had an<br/>17 important or large position in my government<br/>18 securities portfolio and FICO bonds, F-I-C-O,<br/>19 which were thrift bailout bonds that had been<br/>20 issued in the '88 to '92 period for the whole<br/>21 thrift bailout that I guess first President Bush<br/>22 had initiated.<br/>23 And the position might have been<br/>24 12 percent of the portfolio, which was<br/>25 important. It was large.</p>   |
| <p style="text-align: right;">Page 115</p> <p>1 looked at at the web site, but I can tell you I<br/>2 made the determination that it wouldn't be<br/>3 useful. I can tell you that I made no effort to<br/>4 go back to it.<br/>5 Q. When Mr. Davis met with you and<br/>6 Mr. Namberg at MFS, what, if any, discussions<br/>7 did you have about Mr. Davis's contacts in<br/>8 Washington?<br/>9 MR. THEODOROU: Objection.<br/>10 A. I don't recall what we discussed at<br/>11 that meeting.<br/>12 Q. What happened as a result of this<br/>13 meeting with Mr. Davis when he came to MFS?<br/>14 A. We made the determination to try him,<br/>15 try using his service. I think it was an annual<br/>16 review, you know, an annual renewal. So we made<br/>17 a decision to use it for a trial for a year. If<br/>18 we liked it, we'd keep using it.<br/>19 Q. What service did Mr. Davis provide you<br/>20 after he was retained as a consultant?<br/>21 A. Well, primarily research and analysis<br/>22 of budgetary legislative affairs in Washington.<br/>23 We used him and -- MFS, the Investment<br/>24 Group, we used him for some specific research<br/>25 that was important to us at the time.</p> | <p style="text-align: right;">Page 117</p> <p>1 By 10 years down the road, and I don't<br/>2 remember exactly when I did this with him, but<br/>3 it was 2000, 2001 period maybe, I did want to<br/>4 kind of refresh my research on FICO and REFCO<br/>5 bonds, but at that point, you know, 10 years<br/>6 down the road, Wall Street had sort of dropped<br/>7 any coverage so there was no source to sort of<br/>8 do research on Wall Street.<br/>9 And Davis was perfect for this because<br/>10 he was able to find me the contact or the person<br/>11 who was administering that program in some<br/>12 agency in Washington, and I was able to contact<br/>13 that person and kind of update my research on<br/>14 the securities.<br/>15 It's an important exercise, sort of<br/>16 revalidate, you know, the reasons for owning it.<br/>17 And I think at the time the agency market had<br/>18 come under some pressure with underperforming<br/>19 treasuries, so it was important for me to<br/>20 decide, well, do you want to cut or are the<br/>21 reasons for owning these no longer valid, or<br/>22 conversely, maybe they represent great value, we<br/>23 should be adding some now, or just very<br/>24 basically, you know, revalidate the purpose for<br/>25 the reason for just keeping them.</p> |

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| <p>1 So he was very helpful for those type</p> <p>2 of research projects.</p> <p>3 Q. You might have stated this, but</p> <p>4 approximately what year was it that you were</p> <p>5 interest in this research on FICO and Mr. Davis</p> <p>6 got you the contact of the person who was</p> <p>7 administering the program?</p> <p>8 A. I don't remember.</p> <p>9 Q. How would Mr. Davis provide you with</p> <p>10 research?</p> <p>11 A. Well, in those -- in that instance he</p> <p>12 gave me a number of a person that would have the</p> <p>13 information. So he was good through his network</p> <p>14 of contacts in being able to steer you the right</p> <p>15 direction.</p> <p>16 Q. Okay. And separate from just that</p> <p>17 particular research, how else would Mr. Davis</p> <p>18 communicate research to you?</p> <p>19 A. Well, we did some direct research. We</p> <p>20 went down to visit Washington a couple of times,</p> <p>21 so he set up the meetings.</p> <p>22 He was also available to our analysts</p> <p>23 or the portfolio managers if they had a</p> <p>24 particular question that he might know the</p> <p>25 answer to. So he was available as a resource,</p>                           | <p>1 Q. Besides agendas and transcripts of Q</p> <p>2 and A, what else did Mr. Davis send via E mail?</p> <p>3 A. I believe he sent us on some occasions</p> <p>4 materials from quarterly refundings.</p> <p>5 Q. Did Mr. Davis ever provide you with a</p> <p>6 newsletter?</p> <p>7 A. I believe -- I don't recall</p> <p>8 specifically, but I think, yes.</p> <p>9 Q. Do you know --</p> <p>10 A. Either it was a newsletter or agenda</p> <p>11 or notes on meetings that he might have had or</p> <p>12 analysis. I'm not sure how to characterize</p> <p>13 that, but it would be a summary of things that</p> <p>14 he thought were of interest.</p> <p>15 Q. How often did you receive E mails from</p> <p>16 Mr. Davis?</p> <p>17 MR. THEODOROU: Objection.</p> <p>18 A. Periodically.</p> <p>19 Q. How often?</p> <p>20 A. I don't know. Several times a week.</p> <p>21 Q. Did you ever receive any faxes from</p> <p>22 Mr. Davis?</p> <p>23 MR. THEODOROU: Objection. Asked</p> <p>24 and answered.</p> <p>25 BY MS. WILLIAMS:</p>  |
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| <p>1 so we might be interested in his analysis.</p> <p>2 Q. Did you receive any E mails from</p> <p>3 Mr. Davis?</p> <p>4 A. Yeah, yes.</p> <p>5 Q. And what kinds of things did Mr. Davis</p> <p>6 send you in E mail?</p> <p>7 MR. THEODOROU: Objection.</p> <p>8 A. He used to send different types of E</p> <p>9 mails. He would send sort of compendium of</p> <p>10 agendas of Washington which weren't that useful.</p> <p>11 He would send what was much more</p> <p>12 interesting, transcripts of Q and A at different</p> <p>13 meetings that he might attend in Washington.</p> <p>14 I found those in particular of</p> <p>15 interest because as much as, say, Greenspan's</p> <p>16 testimony for Humphrey Hawkins on the Hill might</p> <p>17 be televised, as soon as they cut to Q and A,</p> <p>18 after he's given his set speech, they might not</p> <p>19 cover the full Q and A.</p> <p>20 And the Q and A, his comments are</p> <p>21 obviously less scripted, he might saying</p> <p>22 something that's interesting, not that he did,</p> <p>23 but it would be interesting to get a transcript</p> <p>24 of his Q and A, and that was something that</p> <p>25 Davis did, which I found to be useful.</p> | <p>1 Q. Did you ever receive any faxes from</p> <p>2 Mr. Davis?</p> <p>3 A. Yes.</p> <p>4 Q. What would Mr. Davis send via fax?</p> <p>5 A. The same materials that would have</p> <p>6 come via E mail.</p> <p>7 Q. And how often did you receive faxes</p> <p>8 from Mr. Davis?</p> <p>9 A. Well, we used to be in a pre-E mail</p> <p>10 world, it's not that long ago everything was</p> <p>11 faxed, so I imagine most of the service</p> <p>12 initially was faxed.</p> <p>13 My preference by far was E mail. I</p> <p>14 preferred electronically. It's generally a</p> <p>15 better quality to read. So I encouraged</p> <p>16 everybody to send everything E mail,</p> <p>17 electronically. Sometimes maybe he couldn't do</p> <p>18 that, so he'd send a fax. I couldn't tell you</p> <p>19 how frequently that was.</p> <p>20 Q. You said that Mr. Davis would</p> <p>21 sometimes send E mails about quarterly refunding</p> <p>22 announcements. How often did you receive E</p> <p>23 mails about those announcements?</p> <p>24 A. I don't remember.</p> <p>25 Q. Just to back up. Whose decision was</p> |

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|--|---|
| <p>1 it to hire Davis Capital as a consultant for<br/>2 MFS?<br/>3 A. Collectively we made a decision as a<br/>4 department. Les Namberg as head of the<br/>5 department is the one that ultimately signed off<br/>6 on it.<br/>7 Q. Did you agree that Mr. Davis should be<br/>8 hired as a consultant to MFS?<br/>9 A. Yes.<br/>10 Q. In what way did you think his services<br/>11 would be useful to you in your job?<br/>12 MR. THEODOROU: Objection.<br/>13 MR. SHOPE: You're asking at the<br/>14 time of the decision to engage Mr. Davis?<br/>15 MS. WILLIAMS: Yes.<br/>16 A. So your question again? I'm sorry.<br/>17 Q. In what way did you think that<br/>18 Mr. Davis's services would be useful to you?<br/>19 A. We had several Washington consultants.<br/>20 We had one, Charlie Cook, you may have heard of,<br/>21 that had been useful who we weren't using<br/>22 anymore. I don't know if he closed his business<br/>23 or we decided not to renew it.<br/>24 But we were obviously interested in,<br/>25 you know, legislative and budgetary affairs in</p>  | <p>1 A. The Fixed Income Department.<br/>2 Q. Do you know if anyone at MFS besides<br/>3 yourself received Mr. Davis's E mails?<br/>4 MR. THEODOROU: Objection. Asked<br/>5 and answered.<br/>6 BY MS. WILLIAMS:<br/>7 Q. Once he was retained, do you know if<br/>8 anyone else besides you received his E mails?<br/>9 A. Yes.<br/>10 Q. Do you know who?<br/>11 A. No.<br/>12 Q. Do you know if anyone else once<br/>13 Mr. Davis was retained received faxes from Davis<br/>14 Capital?<br/>15 A. My understanding is that several or<br/>16 many of us did. I don't remember specifically<br/>17 who that would be.<br/>18 MR. THEODOROU: Erica, it's almost<br/>19 12:30. What do you want to --<br/>20 A. I could guess.<br/>21 MR. THEODOROU: Hold on. Don't<br/>22 speculate.<br/>23 MS. WILLIAMS: I just have a couple<br/>24 more questions, and we can break.<br/>25 MR. THEODOROU: Okay.</p> |
| Page 123   | Page 125  |
| <p>1 Washington, particularly myself where my primary<br/>2 responsibility lie in the government securities<br/>3 market, in the mortgage-backed securities market<br/>4 and the agency market, I was often interested in<br/>5 issues that were taking place, being hammered<br/>6 out in Washington.<br/>7 Q. You said that the decision to hire<br/>8 Mr. Davis was a department decision. Do you<br/>9 know who in the department weighed in on that<br/>10 decision?<br/>11 A. Ultimately Les Namberg who ran the<br/>12 department.<br/>13 We had a budget for outside<br/>14 consultants, and we had to make room in our<br/>15 budget for, you know, this expense, and he was<br/>16 the one that had to sort of juggle the competing<br/>17 interests.<br/>18 But we had, I think, a couple of other<br/>19 Washington consultants too. I'm not sure if the<br/>20 Fixed Income Department paid for them or the<br/>21 Equity Department paid for them. But obviously<br/>22 the Equity Department were also interested in<br/>23 legislative affairs in Washington.<br/>24 Q. Which department paid for Mr. Davis's<br/>25 services?</p> | <p>1 BY MS. WILLIAMS:<br/>2 Q. Did Mr. Davis ever send Treasury<br/>3 refunding announcements to you via fax?<br/>4 A. Via fax or E mail, yes. I don't know<br/>5 which specifically.<br/>6 Q. Did you review these announcements<br/>7 when you received them from Mr. Davis?<br/>8 A. Yes.<br/>9 MS. WILLIAMS: I think this would<br/>10 be a good time to break.<br/>11 MR. THEODOROU: Okay.<br/>12 THE VIDEOGRAPHER: Going off the<br/>13 record, 12:23 p.m.<br/>14 (Lunch recess taken)<br/>15<br/>16<br/>17<br/>18<br/>19<br/>20<br/>21<br/>22<br/>23<br/>24<br/>25</p>   |

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|--|---|
| <p>1 AFTERNOON SESSION</p> <p>2 THE VIDEOGRAPHER: Back on the</p> <p>3 record, 1:25 p.m.</p> <p>4 BY MS. WILLIAMS:</p> <p>5 Q. Mr. Northern, did you ever communicate</p> <p>6 with Mr. Davis over the phone?</p> <p>7 A. Yes.</p> <p>8 Q. How often did you communicate with</p> <p>9 Mr. Davis over the phone?</p> <p>10 MR. THEODOROU: Objection.</p> <p>11 A. Infrequently.</p> <p>12 Q. When you say "infrequently," was it</p> <p>13 once a month?</p> <p>14 A. No. Less frequently than that.</p> <p>15 Q. Could you give me approximately how</p> <p>16 often -- how many times a year you might talk to</p> <p>17 Mr. Davis on the phone?</p> <p>18 A. A handful of times.</p> <p>19 Q. Is that five?</p> <p>20 A. Yeah.</p> <p>21 Q. Who would call whom?</p> <p>22 A. It could be either one. It could go</p> <p>23 either direction.</p> <p>24 Q. Prior to October 31, 2001, what</p> <p>25 conversations over the phone do you recall</p> | <p>1 A. I remember he called to mention that</p> <p>2 Treasury was considering issuing war bonds in</p> <p>3 response to 9/11.</p> <p>4 Q. Do you know where he got that</p> <p>5 information?</p> <p>6 A. No.</p> <p>7 Q. Did you ask him where he got the</p> <p>8 information?</p> <p>9 A. No.</p> <p>10 Q. Prior to this conversation with</p> <p>11 Mr. Davis, had you heard the Treasury would be</p> <p>12 issuing war bonds?</p> <p>13 A. No.</p> <p>14 Q. Did the information that Mr. Davis</p> <p>15 gave you during that conversation turn out to be</p> <p>16 accurate?</p> <p>17 A. Yes, though I don't remember if they</p> <p>18 actually did issue war bonds.</p> <p>19 Q. What, if anything, did you do as a</p> <p>20 result of Mr. Davis's conversation when he told</p> <p>21 you that Treasury would be issuing war bonds?</p> <p>22 MR. SHOPE: Objection.</p> <p>23 A. What did I do in what sense?</p> <p>24 Q. Did you take any action as a result of</p> <p>25 receiving this information?</p>        |
| Page 127   | Page 129  |
| <p>1 having with Mr. Davis?</p> <p>2 A. I remember having a conversation with</p> <p>3 Mr. Davis when we first arranged to have him</p> <p>4 come up to visit with us before we actually</p> <p>5 hired him.</p> <p>6 I collected -- the other</p> <p>7 conversations, I remember we had a conversation</p> <p>8 about research I was doing on FICO and REFCO</p> <p>9 bonds.</p> <p>10 That's all that comes to mind right</p> <p>11 now.</p> <p>12 Q. Do you recall any conversations with</p> <p>13 Mr. Davis when you discussed whether Treasury</p> <p>14 would be issuing war bonds?</p> <p>15 A. Yes.</p> <p>16 Q. Do you recall when that conversation</p> <p>17 took place?</p> <p>18 A. Yes.</p> <p>19 Q. When?</p> <p>20 A. Roughly some time after September 11,</p> <p>21 2001.</p> <p>22 Q. Did it take place prior to October 31,</p> <p>23 2001?</p> <p>24 A. Yes.</p> <p>25 Q. What did you discuss?</p>                              | <p>1 A. In the portfolios?</p> <p>2 Q. Did you take any action in the</p> <p>3 portfolios? We'll start there.</p> <p>4 A. No. This was a retail product for</p> <p>5 individuals. It wasn't an institutional product</p> <p>6 for portfolios or mutual funds or insurance</p> <p>7 companies.</p> <p>8 Q. Did you tell anyone about the</p> <p>9 information?</p> <p>10 A. Yes.</p> <p>11 Q. Who did you tell?</p> <p>12 A. I shared it with colleagues on our</p> <p>13 trading desk. Mr. Kurinsky was the only one I</p> <p>14 recall specifically.</p> <p>15 Q. How long after the conversation with</p> <p>16 Mr. Davis in which he said that Treasury would</p> <p>17 be issuing war bonds did you communicate that</p> <p>18 information to Mr. Kurinsky?</p> <p>19 A. I don't know.</p> <p>20 Q. Do you know if it was a week later?</p> <p>21 A. I don't know.</p> <p>22 Q. So it could have been a week later,</p> <p>23 but you don't recall?</p> <p>24 MR. THEODOROU: Objection.</p> <p>25 MR. SHOPE: Objection.</p> |

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| <p>1 A. I don't think it was a week later. I<br/>2 don't know.<br/>3 Q. Do you think it was less than a week?<br/>4 A. Yes.<br/>5 Q. Did you ever purchase any war bonds<br/>6 after receiving this call from Mr. Davis?<br/>7 A. No. Like I said, I have no knowledge<br/>8 that they actually started a war bond program.<br/>9 Q. Why did you tell Mr. Kurinsky about<br/>10 Mr. Davis's conversation with you?<br/>11 A. Perhaps it might be something he might<br/>12 be interested in. Not as an investment, more as<br/>13 just general interest.<br/>14 It was a political -- essentially this<br/>15 is public relations thing. It's not because the<br/>16 government needs to raise money. It was just a<br/>17 gesture they were making. It was sort of<br/>18 interesting that they were going to the trouble<br/>19 to make that kind of a gesture.<br/>20 Q. Did you tell other colleagues besides<br/>21 Mr. Kurinsky?<br/>22 A. I believe so, but I can't remember<br/>23 specifically who I talked with about it.<br/>24 MS. WILLIAMS: I'd like to have<br/>25 this marked as Exhibit 6.</p> | <p>1 Do you see your E mail address on the<br/>2 list of blind carbon copies? And I would refer<br/>3 you to the second page of the document 13 lines<br/>4 down.<br/>5 A. Yes.<br/>6 Q. Is that what your E mail address was<br/>7 when you were employed at MFS?<br/>8 A. Yes.<br/>9 Q. If I could refer you to the third page<br/>10 of the exhibit, last paragraph, it says, "War<br/>11 bonds will be sold by Treasury."<br/>12 Do you see that?<br/>13 A. Yes.<br/>14 Q. Does that refresh your recollection at<br/>15 all that the Treasury actually issued war bonds<br/>16 or sold war bonds?<br/>17 A. No.<br/>18 Q. Do you recall ever seeing this E mail<br/>19 in October 2001?<br/>20 A. No.<br/>21 Q. Do you know -- I'm also on the last<br/>22 paragraph, it says, "Treasury sources confirm<br/>23 the small denomination 17-year bonds with a put<br/>24 will be sold via their web site."<br/>25 Do you see that sentence?</p> |
| Page 131   | Page 133   |
| <p>1 (Exhibit 6 marked<br/>2 for identification)<br/>3 (Pause)<br/>4 MS. WILLIAMS: Do we need to take a<br/>5 break?<br/>6 MR. SHOPE: No. He was trying to<br/>7 find his eyeglasses, and they were hiding<br/>8 themselves in the case.<br/>9 THE WITNESS: They were right in<br/>10 front of me.<br/>11 (Pause)<br/>12 BY MS. WILLIAMS:<br/>13 Q. If you could let me know when you have<br/>14 finished reviewing the document.<br/>15 A. Okay.<br/>16 Q. Mr. Northern, have you --<br/>17 A. I'm sorry. I haven't finished.<br/>18 Q. Okay.<br/>19 (Pause)<br/>20 Q. Have you seen this document before,<br/>21 sir?<br/>22 A. Not that I recall.<br/>23 Q. This is an E mail from Pete Davis to,<br/>24 and blind carbon copying a number of people, and<br/>25 it's dated Friday, October 19, 2001.</p>  | <p>1 A. Yes.<br/>2 Q. Do you know who the Treasury sources<br/>3 are that Mr. Davis is referring to?<br/>4 A. No.<br/>5 Q. Do you know if Mr. Davis ever called<br/>6 anyone else at MFS?<br/>7 A. Yes.<br/>8 Q. Who did he call?<br/>9 A. Our analyst Richard Hawkins and Peter<br/>10 Sullivan, in all likely -- well, that's all.<br/>11 Q. Do you have any reason to believe you<br/>12 didn't receive this E mail?<br/>13 A. No.<br/>14 Q. How do you know Mr. Davis called<br/>15 Mr. Hawkins?<br/>16 A. Mr. Hawkins at that point was working<br/>17 as a corporate credit analyst, and I believe he<br/>18 had interests in issues in Washington and was<br/>19 familiar with Mr. Davis and used him as a<br/>20 resource.<br/>21 Q. Did you have any conversations with<br/>22 Mr. Hawkins about Mr. Davis?<br/>23 A. Yes.<br/>24 Q. What do you recall about those<br/>25 conversations?</p>   |

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|---|--|
| <p>1 A. I don't recall anything from those</p> <p>2 conversations.</p> <p>3 Q. What about Mr. Sullivan, how do you</p> <p>4 know that Mr. Davis called Mr. Sullivan?</p> <p>5 A. I don't know that Mr. Davis called</p> <p>6 Mr. Sullivan.</p> <p>7 I know that Mr. Sullivan called</p> <p>8 Mr. Davis because Peter is the analyst that</p> <p>9 covered our airline mortgage bonds, and I know</p> <p>10 that they worked on that together.</p> <p>11 Q. They being Mr. Sullivan and Mr. Davis?</p> <p>12 A. Yes.</p> <p>13 Q. How did they work on that together?</p> <p>14 A. My understanding, because I wasn't a</p> <p>15 party to it, but my understanding was that Peter</p> <p>16 Sullivan wanted to do some research on</p> <p>17 legislation that was being proposed, bailing out</p> <p>18 the airlines after September 11th, and that he</p> <p>19 contacted Mr. Davis in the process of doing that</p> <p>20 research.</p> <p>21 Q. Was this contact prior to October 31,</p> <p>22 2001?</p> <p>23 A. Yes.</p> <p>24 Q. And after September 11, 2001?</p> <p>25 A. Yes.</p> | <p>1 Q. Where did you get the document in</p> <p>2 order to produce it?</p> <p>3 A. I don't recall.</p> <p>4 Q. Do you know if you had the document in</p> <p>5 electronic form prior to producing it?</p> <p>6 A. I don't know that.</p> <p>7 Q. Do you see the handwriting in the</p> <p>8 upper-right-hand corner of the document?</p> <p>9 A. Yes.</p> <p>10 Q. Do you know whose handwriting that is?</p> <p>11 A. It looks like my handwriting.</p> <p>12 Q. And it appears to say Rick and a</p> <p>13 number.</p> <p>14 Do you know what that number</p> <p>15 corresponds to, if anything?</p> <p>16 A. I do not.</p> <p>17 Q. Who is Rick?</p> <p>18 A. I don't know what this is referring</p> <p>19 to.</p> <p>20 Q. What, if any, communications did you</p> <p>21 have with Mr. Davis that led to this E mail?</p> <p>22 A. I don't remember specifically. This</p> <p>23 is a response to a request that I had to him,</p> <p>24 put to him of who do I talk to at Treasury.</p> <p>25 And I can't remember what the issue</p>  |
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| <p>1 Q. Do you know what, if any, services</p> <p>2 Mr. Davis provided to Mr. Sullivan?</p> <p>3 A. I don't. I wasn't a party to their</p> <p>4 conversations.</p> <p>5 MS. WILLIAMS: I'd like to have</p> <p>6 this marked as Exhibit 7.</p> <p>7 (Exhibit 7 marked</p> <p>8 for identification)</p> <p>9 (Pause)</p> <p>10 BY MS. WILLIAMS:</p> <p>11 Q. Have you finished reviewing the</p> <p>12 document, sir?</p> <p>13 A. Yes.</p> <p>14 Q. Do you recognize this document?</p> <p>15 A. Yes.</p> <p>16 Q. What is it?</p> <p>17 A. This is an E mail that I produced for</p> <p>18 your discovery purposes. It was an E mail that</p> <p>19 had been sent to me from Pete Davis.</p> <p>20 Q. What's the date of the E mail?</p> <p>21 A. From Pete Davis, Thursday, April 8,</p> <p>22 1999.</p> <p>23 Q. You said you produced this in this</p> <p>24 litigation. Where was this document kept?</p> <p>25 A. I don't recall.</p>  | <p>1 was that I wanted to discuss with someone at</p> <p>2 Treasury, but at the time I was looking for a</p> <p>3 contact person at Treasury to address some</p> <p>4 particular issue I had at the time. I just</p> <p>5 can't remember right now what that was.</p> <p>6 Q. Do you know if you -- you said that</p> <p>7 you had asked Mr. Davis who do you talk to at</p> <p>8 Treasury. Do you know if you asked him this</p> <p>9 question via phone?</p> <p>10 A. I don't recall.</p> <p>11 Q. Do you recall if there was an E mail</p> <p>12 that you sent to him prior to this E mail in</p> <p>13 which you asked who you talk to at Treasury?</p> <p>14 A. I don't remember.</p> <p>15 Q. The E mail subject is "Treasury</p> <p>16 exchange offering."</p> <p>17 Do you know what that refers to?</p> <p>18 A. I don't remember.</p> <p>19 Q. Underneath that, in the body it says,</p> <p>20 "Steve, Treasury often listens, though I can't</p> <p>21 guarantee it."</p> <p>22 Do you know what Mr. Davis is</p> <p>23 referring to when he writes "Treasury often</p> <p>24 listens, though I can't guarantee it"?</p> <p>25 A. I think what he's telling me is these</p> |

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| <p>1 people might listen to what I had to say, my<br/>2 opinions on some matter but that he couldn't<br/>3 guarantee they would actually take my opinion<br/>4 into consideration.<br/>5 Q. Were you working on anything related<br/>6 to a Treasury exchange offering in April of '99?<br/>7 A. I don't have any recollection of that.<br/>8 Q. Why did you ask Mr. Davis who you<br/>9 could talk to at Treasury?<br/>10 MR. THEODOROU: Objection.<br/>11 A. I don't recall specifically what this<br/>12 was about.<br/>13 Clearly I was asking him for contact<br/>14 names with regard to an issue that I had some<br/>15 interest in, and I wanted to express my opinion.<br/>16 He was telling me they might listen, but that<br/>17 might be all.<br/>18 Q. I might have phrased my question in a<br/>19 confusing way.<br/>20 I meant why did you ask Mr. Davis<br/>21 rather than someone else? Why did you go to<br/>22 Mr. Davis to ask who you could talk to at<br/>23 Treasury?<br/>24 MR. THEODOROU: Objection.<br/>25 A. I don't remember specifically this,</p>   | <p>1 know who he was. I just don't recall it right<br/>2 now.<br/>3 Q. After receiving this E mail, did you<br/>4 contact Mr. Gensler?<br/>5 MR. THEODOROU: Objection.<br/>6 A. I don't recall.<br/>7 Q. What about the next name, Lee Sachs,<br/>8 did you know Mr. Sachs prior to receiving this E<br/>9 mail?<br/>10 A. I'm familiar with the name.<br/>11 Q. Later down in that paragraph I see,<br/>12 this is the third line, "He attended our meeting<br/>13 with David Wilcox, Assistant Secretary Economic<br/>14 Policy, on January 25th."<br/>15 Do you know what Mr. Davis is<br/>16 referring to in that sentence?<br/>17 A. Yeah. I think that was the trip we<br/>18 took that we talked about earlier, the trip I<br/>19 took down to Washington where we visited<br/>20 Treasury officials.<br/>21 Q. Do you recall now meeting with<br/>22 Mr. Sachs?<br/>23 A. Specifically I don't remember<br/>24 Mr. Sachs, but looking at this, I would say he<br/>25 was one of the people we met with.</p> |
| Page 139   | Page 141  |
| <p>1 but it looks to me that this is after one of our<br/>2 meetings that we had had at Treasury perhaps a<br/>3 few months down the road, and I was asking him<br/>4 for phone numbers of people that we met with. I<br/>5 believe that's probably what these contacts are.<br/>6 Q. Okay. Well, let's go down the list.<br/>7 The first name I see is Gary Gensler.<br/>8 Do you see that?<br/>9 A. Yes.<br/>10 Q. Prior to April 1999, had you met<br/>11 Mr. Gensler?<br/>12 A. I don't remember specifically the<br/>13 people that we did meet at Treasury. I think<br/>14 it's quite possible we did meet with him.<br/>15 Q. Were you familiar with Mr. Gensler<br/>16 prior to receiving this E mail?<br/>17 A. I don't recall. It's possible that he<br/>18 was one of the people we met.<br/>19 Q. I meant did you know who he was? Did<br/>20 you know he worked for Treasury prior to<br/>21 receiving this E mail?<br/>22 A. I don't specifically remember. If I<br/>23 met with him at Treasury that January,<br/>24 February of that year, he was introduced to me<br/>25 by his title, and the answer would be yes, I did</p> | <p>1 Q. Does this refresh your recollection as<br/>2 to when that meeting with Treasury officials<br/>3 occurred?<br/>4 A. Yes.<br/>5 Q. And when did it occur?<br/>6 A. January 25th of 1999.<br/>7 Q. During that meeting in January of<br/>8 1999, did you meet with more than one Treasury<br/>9 official?<br/>10 A. I don't remember specifically those<br/>11 meetings.<br/>12 Q. Do you recall generally anything you<br/>13 all discussed during that meeting at Treasury?<br/>14 A. I don't remember the meetings<br/>15 specifically or who we met with, how long we<br/>16 were there and what was discussed.<br/>17 Q. Do you know if you -- did you contact<br/>18 Mr. Sachs after receiving this E mail from<br/>19 Mr. Davis?<br/>20 A. I don't have a recollection of that.<br/>21 Q. The next name is Jill Ouseley. Did<br/>22 you know Miss Ouseley prior to receiving this E<br/>23 mail?<br/>24 A. I don't believe so.<br/>25 Q. Do you know if you had met with</p>                            |

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| <p style="text-align: right;">Page 142</p> <p>1 Miss Ouseley prior to receiving this E mail?</p> <p>2 A. I don't know.</p> <p>3 Q. Did you contact Miss Ouseley after you</p> <p>4 received this E mail?</p> <p>5 A. I have no recollection of that.</p> <p>6 Q. The next line says -- Mr. Davis</p> <p>7 writes, "Let me know how it goes."</p> <p>8 Do you see that?</p> <p>9 A. Yes.</p> <p>10 Q. Do you know what the it is he's</p> <p>11 referring to in that sentence?</p> <p>12 A. A phone call.</p> <p>13 Q. A phone call to whom?</p> <p>14 A. If I call one of these people. He</p> <p>15 gave me their names and contact information, so</p> <p>16 he was asking in effect if I contacted one of</p> <p>17 them, let him know how it goes.</p> <p>18 Q. Did you have any communication with</p> <p>19 Mr. Davis after receiving this E mail about any</p> <p>20 of the subject matter of this E mail?</p> <p>21 A. I don't recall.</p> <p>22 Q. Do you know if you responded to the E</p> <p>23 mail via E mail, you replied, excuse me?</p> <p>24 A. I don't recall.</p> <p>25 Q. Prior to October 31, 2001, did you</p>                             | <p style="text-align: right;">Page 144</p> <p>1 MR. SHOPE: Objection.</p> <p>2 A. The auctions are quarterly. They</p> <p>3 settle February 15th, May 15th, August 15th, and</p> <p>4 November 15th, unless those dates happen to be a</p> <p>5 weekend, in which case it's adjusted to settle</p> <p>6 on a business day.</p> <p>7 The refunding announcement is the week</p> <p>8 before the securities are auctioned, and the</p> <p>9 auctions are three to five business days before</p> <p>10 the settlement.</p> <p>11 So if I back out from the settlement</p> <p>12 dates which are Feb 15th, May, August, November,</p> <p>13 you back out, the prior week they get auctioned,</p> <p>14 and the prior week there's the refunding</p> <p>15 announcement. So for February it could be late</p> <p>16 January, early February, that sort of a thing</p> <p>17 would be the math.</p> <p>18 Q. Now, just to clarify. I think today</p> <p>19 we've talked about Treasury funding and</p> <p>20 quarterly refunding conferences. Do you</p> <p>21 understand those to be the same thing?</p> <p>22 MR. SHOPE: Objection.</p> <p>23 BY MS. WILLIAMS:</p> <p>24 Q. Treasury refunding conferences and</p> <p>25 quarterly refunding conferences?</p> |
| <p style="text-align: right;">Page 143</p> <p>1 have an understanding as to what Treasury</p> <p>2 refunding conferences were?</p> <p>3 A. Yes.</p> <p>4 Q. What was your understanding?</p> <p>5 A. Treasury would use those meetings to</p> <p>6 discuss three general topics. One was looking</p> <p>7 back at sources and uses of funds for the</p> <p>8 overall government.</p> <p>9 Second was anticipated needs of</p> <p>10 spending for the government and how that would</p> <p>11 translate into borrowing needs for the Federal</p> <p>12 Government going forward.</p> <p>13 Thirdly, they would translate that</p> <p>14 into how many securities they'd be buying of</p> <p>15 different maturities the following week.</p> <p>16 Q. How did you come to this</p> <p>17 understanding?</p> <p>18 A. Well, I'd been at this point in the</p> <p>19 industry for a long period of time, and it was</p> <p>20 just general knowledge.</p> <p>21 Q. Do you know how often the Treasury</p> <p>22 refunding conferences were held?</p> <p>23 A. They're quarterly.</p> <p>24 Q. And do you know which months of the</p> <p>25 year they're held in?</p> | <p style="text-align: right;">Page 145</p> <p>1 MR. SHOPE: Objection.</p> <p>2 A. Yes.</p> <p>3 Q. I just wanted to make sure that I was</p> <p>4 using them synonymously, so I didn't know if you</p> <p>5 were using them differently.</p> <p>6 Do you have any understanding as to</p> <p>7 how the Treasury refunding conferences were</p> <p>8 structured?</p> <p>9 MR. SHOPE: I'm sorry, could you</p> <p>10 have that question reread?</p> <p>11 (Record read)</p> <p>12 MR. SHOPE: And you're asking about</p> <p>13 his understanding today?</p> <p>14 MS. WILLIAMS: As of October 31,</p> <p>15 2001.</p> <p>16 MR. SHOPE: What was his</p> <p>17 understanding at --</p> <p>18 BY MS. WILLIAMS:</p> <p>19 Q. What was your understanding at that</p> <p>20 time as to how the Treasury refunding</p> <p>21 conferences were structured?</p> <p>22 A. No.</p> <p>23 Q. No, you did not have an understanding</p> <p>24 as of October 31, 2001 as to how --</p> <p>25 A. I thought that's what your question</p>   |

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| <p>1 was.</p> <p>2 Q. That was. The way it was phrased was</p> <p>3 what was your understanding, and your answer</p> <p>4 came out no, so I was just clarifying that you</p> <p>5 did not have an understanding as of October 31,</p> <p>6 2001 as to how they were structured?</p> <p>7 A. Correct, I didn't.</p> <p>8 Q. Did you know as of October 31, 2001</p> <p>9 who was allowed to attend the Treasury refunding</p> <p>10 conferences?</p> <p>11 MR. THEODOROU: Objection.</p> <p>12 A. No.</p> <p>13 Q. Did you know if members of the media</p> <p>14 attended those conferences?</p> <p>15 MR. THEODOROU: Objection.</p> <p>16 A. I didn't know how they proceeded with</p> <p>17 the quarterly refunding conferences.</p> <p>18 Q. Did you know if there was a live news</p> <p>19 feed available at the conferences?</p> <p>20 MR. THEODOROU: Objection.</p> <p>21 A. I don't know how they set up their</p> <p>22 quarterly refunding conferences.</p> <p>23 Q. As of October 31, 2001, did you know</p> <p>24 if -- were you aware if Peter Davis attended</p> <p>25 these Treasury refunding conferences?</p> | <p>1 A. They're held -- like I told you a few</p> <p>2 minutes ago, if the settlement date is</p> <p>3 February 15th, the actual auctions of the</p> <p>4 securities are the prior week, and the refunding</p> <p>5 is the week prior to that.</p> <p>6 So I'm certainly aware of when they're</p> <p>7 held if I go to the trouble of backing out those</p> <p>8 dates. It was certainly not something I paid</p> <p>9 any attention to.</p> <p>10 Q. Did you know in 2001 which day of the</p> <p>11 week the conferences were usually held?</p> <p>12 A. No.</p> <p>13 Q. Did you know who -- as of October 31,</p> <p>14 2001, were you familiar with the term embargo as</p> <p>15 it referred to the release of information?</p> <p>16 MR. THEODOROU: Objection.</p> <p>17 A. Yes.</p> <p>18 Q. What, if any, knowledge did you have</p> <p>19 prior to October 31, 2001 about whether Treasury</p> <p>20 used an embargo procedure for the release of</p> <p>21 information?</p> <p>22 A. None.</p> <p>23 MS. WILLIAMS: I'd like to have</p> <p>24 this marked as Exhibit 8.</p> <p>25 (Exhibit 8 marked</p> |
| Page 147   | Page 149  |
| <p>1 MR. THEODOROU: Objection.</p> <p>2 A. No.</p> <p>3 Q. Did you typically know in advance when</p> <p>4 Treasury was going to hold a refunding</p> <p>5 conference?</p> <p>6 MR. THEODOROU: Objection.</p> <p>7 A. No.</p> <p>8 Q. If I could refer you to Exhibit 2,</p> <p>9 page 94.</p> <p>10 MR. THEODOROU: Which page?</p> <p>11 BY MS. WILLIAMS:</p> <p>12 Q. Page 94, line one through three.</p> <p>13 A. Okay.</p> <p>14 Q. Do you see the question is, "Are you</p> <p>15 typically aware in advance when a conference, a</p> <p>16 quarterly refunding conference, will be held?</p> <p>17 "Answer: Yes."</p> <p>18 Were you asked that question and did</p> <p>19 you give that answer?</p> <p>20 A. Yes.</p> <p>21 Q. So just to clarify, as of October 31,</p> <p>22 2001, were you typically aware in advance when a</p> <p>23 quarterly refunding conference would be held?</p> <p>24 A. Yes.</p> <p>25 Q. How would you --</p>  | <p>1 for identification)</p> <p>2 (Pause)</p> <p>3 BY MS. WILLIAMS:</p> <p>4 Q. Mr. Northern, have you seen this</p> <p>5 document before?</p> <p>6 A. Yes.</p> <p>7 Q. What is it?</p> <p>8 A. It's titled Department of Treasury on</p> <p>9 a headline, and the header Treasury News From</p> <p>10 the Office of Public Affairs.</p> <p>11 It's a statement from Under Secretary</p> <p>12 Treasury for Domestic Finance Gary Gensler.</p> <p>13 It's remarks that he gave at the November 2000</p> <p>14 Treasury quarterly refund.</p> <p>15 Q. And this is a document that you</p> <p>16 produced, correct?</p> <p>17 A. Yes.</p> <p>18 Q. Where did you obtain a copy of this</p> <p>19 document?</p> <p>20 A. It was sent to me by Davis Capital.</p> <p>21 Q. And how was it sent to you?</p> <p>22 A. It looks like it was faxed.</p> <p>23 Q. If I could refer you to the fax line</p> <p>24 at the top of the page "11/01/00 7:51," then I</p> <p>25 see a number "202-544-7098."</p>  |

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|--|--|
| <p>1 Do you see that?</p> <p>2 A. Yes.</p> <p>3 Q. Are you familiar with that number?</p> <p>4 A. No.</p> <p>5 Q. Then I see -- what was your fax number</p> <p>6 at MFS?</p> <p>7 A. I don't remember. Eventually we had</p> <p>8 faxes in our computers, so somehow they could --</p> <p>9 but I don't remember the number.</p> <p>10 Q. Okay. Following that number I see</p> <p>11 "Massachusetts Financial Se/Nothorn,Steve."</p> <p>12 Do you see that?</p> <p>13 A. Yes.</p> <p>14 Q. Is it your testimony that you received</p> <p>15 this document from Mr. Davis?</p> <p>16 A. Yes.</p> <p>17 Q. I see some marginalia on the document.</p> <p>18 Specifically about halfway down the first page I</p> <p>19 see a circle on the left-hand side, and then</p> <p>20 there's some underlining.</p> <p>21 Do you see the marginalia I'm</p> <p>22 referring to?</p> <p>23 A. Yes.</p> <p>24 Q. Do you know whose handwriting that is?</p> <p>25 A. It looks like it's mine.</p>  | <p>1 Q. What about as of October 31, 2001?</p> <p>2 MR. THEODOROU: Objection.</p> <p>3 A. No.</p> <p>4 Q. Do you know if you ever had any</p> <p>5 discussions with Mr. Davis about this document?</p> <p>6 A. I don't.</p> <p>7 Q. Did you ever receive any other</p> <p>8 documents of this sort regarding Treasury</p> <p>9 refunding conferences from Mr. Davis?</p> <p>10 A. Not that I recall.</p> <p>11 Q. Do you believe you did not receive any</p> <p>12 documents like this from Mr. Davis?</p> <p>13 MR. THEODOROU: Objection.</p> <p>14 A. I have no reason not to -- I have no</p> <p>15 reason to -- what was your question? No reason</p> <p>16 to believe that I hadn't?</p> <p>17 Q. Okay. I just was trying to clarify.</p> <p>18 When you say not that you recall, did that mean</p> <p>19 that you did not receive any other documents</p> <p>20 like this from Mr. Davis?</p> <p>21 MR. THEODOROU: I don't think that</p> <p>22 was his testimony.</p> <p>23 BY MS. WILLIAMS:</p> <p>24 Q. I'm just trying to clarify the not</p> <p>25 that you recall.</p> |
| Page 151   | Page 153   |
| <p>1 Q. Is this a document that you kept in</p> <p>2 your files?</p> <p>3 A. Yes.</p> <p>4 Q. Why did you keep this document?</p> <p>5 A. For future reference. These were</p> <p>6 apparently statistics that I had an interest in.</p> <p>7 Q. On the top-left-hand corner, under the</p> <p>8 heading I see the words "Embargo time will be</p> <p>9 set."</p> <p>10 Do you see that?</p> <p>11 A. Yes.</p> <p>12 Q. Do you know what that statement means?</p> <p>13 MR. THEODOROU: As of what date?</p> <p>14 November 1, 2000?</p> <p>15 MS. WILLIAMS: Sure, or October 31,</p> <p>16 2001.</p> <p>17 BY MS. WILLIAMS:</p> <p>18 Q. As of October 31, 2001, but you hadn't</p> <p>19 received it yet, so as of November 1, 2000, did</p> <p>20 you know what that statement meant?</p> <p>21 A. 2001 I had received this.</p> <p>22 Q. Right. But my question is -- okay.</p> <p>23 As of November 1, 2000, did you know</p> <p>24 what that statement meant?</p> <p>25 A. No.</p> | <p>1 MR. SHOPE: Can we maybe strike</p> <p>2 that from the top, and if you could phrase it as</p> <p>3 simply as possible without any double negatives</p> <p>4 or anything like that.</p> <p>5 BY MS. WILLIAMS:</p> <p>6 Q. Okay. Did you receive any other</p> <p>7 documents of this sort regarding Treasury</p> <p>8 refunding announcements from Mr. Davis?</p> <p>9 A. As I sit here, not that I recall</p> <p>10 having received.</p> <p>11 Q. And just to clarify, prior to</p> <p>12 October 31, 2001, had you read this document?</p> <p>13 MR. THEODOROU: Objection.</p> <p>14 A. Yes.</p> <p>15 Q. Did you go to work at MFS on</p> <p>16 October 31, 2001?</p> <p>17 A. Yes.</p> <p>18 Q. What time did you arrive?</p> <p>19 A. I don't recall specifically. My</p> <p>20 general practice was to get in 7, 7:30 in the</p> <p>21 morning.</p> <p>22 Q. What did you do after you arrived at</p> <p>23 work that day?</p> <p>24 A. I recall starting some portfolio work.</p> <p>25 I was selling some intermediate maturity</p>                                     |

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| <p>1 treasuries to buy longer maturity treasuries, so<br/> 2 I was beginning some work restructuring the<br/> 3 portfolios that morning.<br/> 4 Q. You said that that morning you started<br/> 5 selling some intermediate maturity treasuries;<br/> 6 is that correct?<br/> 7 A. Yes.<br/> 8 Q. And did you buy any longer maturity<br/> 9 treasuries that morning?<br/> 10 A. Yes.<br/> 11 Q. When?<br/> 12 A. Some time between 9:30, ten o'clock.<br/> 13 Q. I want to know what you recall doing<br/> 14 prior to 9 a.m. that morning.<br/> 15 A. I don't have any specific<br/> 16 recollections of what I did prior to 9 a.m.<br/> 17 Q. Do you know if you started selling the<br/> 18 intermediate maturity treasuries prior to 9<br/> 19 a.m.?<br/> 20 A. Yes, I know that.<br/> 21 Q. Did you?<br/> 22 A. No, I didn't.<br/> 23 Q. When did you start selling the<br/> 24 intermediate --<br/> 25 A. Actually, I take that back. I don't</p>   | <p>1 Q. Are you familiar with the Chicago<br/> 2 Index?<br/> 3 A. The Chicago Purchasing Manager's<br/> 4 Index?<br/> 5 Q. Yes. All I have is Chicago Index. Is<br/> 6 there something called a Chicago Purchasing<br/> 7 Manager's Index?<br/> 8 A. Yes.<br/> 9 Q. Is that what you were referring to<br/> 10 when you say "The purchasing manager's survey"?<br/> 11 A. Yes. There are two surveys. One --<br/> 12 well, there are a series of surveys. There are<br/> 13 regional ones, the Chicago Purchasing Manager's<br/> 14 Index being one, and then there's a National<br/> 15 Purchasing Manager's Index, and that's what we<br/> 16 were expecting that morning.<br/> 17 Q. What time were you expecting that?<br/> 18 A. 10 a.m.<br/> 19 Q. And how were you aware that that<br/> 20 purchasing manager's information was going to<br/> 21 come out at 10 a.m.?<br/> 22 A. That was a release that I tracked as<br/> 23 being a very useful indicator.<br/> 24 Q. How did you track the release?<br/> 25 A. I made sure I was aware of what it</p> |
| Page 155  | Page 157  |
| <p>1 know when I did those sales.<br/> 2 Q. Did you review any E mails that<br/> 3 morning prior to 9 a.m.?<br/> 4 A. Not as I sit here that I can remember.<br/> 5 Q. Did you review any news that morning?<br/> 6 A. I don't have any specific<br/> 7 recollections of what I did that morning prior<br/> 8 to nine o'clock.<br/> 9 Q. On October 31, 2001 when you arrived<br/> 10 at work, were you expecting any announcements?<br/> 11 MR. THEODOROU: Objection.<br/> 12 BY MS. WILLIAMS:<br/> 13 Q. Were you expecting any announcements<br/> 14 to be made that day?<br/> 15 A. What sort of announcements?<br/> 16 Q. Any announcements by the government.<br/> 17 A. I was expecting an announcement on the<br/> 18 purchasing manager's survey, and I don't know<br/> 19 whether that's a government survey. I actually<br/> 20 think it's a private sector survey.<br/> 21 Q. Were you expecting any releases that<br/> 22 day?<br/> 23 A. The only release on my radar that I<br/> 24 was expecting that morning was the purchasing<br/> 25 manager's.</p> | <p>1 was.<br/> 2 Q. How did you do that?<br/> 3 A. Well, if I'm at the trading desk at<br/> 4 ten o'clock, I'll watch for it, see how the<br/> 5 market reacts.<br/> 6 If it's a surprise to the market, if<br/> 7 it's higher or lower than expectations, I'll<br/> 8 monitor how the market reacts to that.<br/> 9 If I'm not at the desk, I'll get it<br/> 10 later on through research or through my<br/> 11 colleagues, or the trader would know the<br/> 12 information, someone who's been on the desk.<br/> 13 Q. How did you know that that release was<br/> 14 going to be made on October 31st at 10 a.m.?<br/> 15 A. It was a release that I tracked, so it<br/> 16 would be something I watched for when it was<br/> 17 going to be released.<br/> 18 These releases are on a set calendar,<br/> 19 so you know ahead of time when it's going to<br/> 20 come out.<br/> 21 Q. Was the fact that the release was<br/> 22 coming out on October 31st noted on any wire<br/> 23 services?<br/> 24 A. To my knowledge?<br/> 25 Q. Yes.</p>             |

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|---|---|
| <p>1 A. To my direct knowledge?</p> <p>2 Q. Yes.</p> <p>3 A. No.</p> <p>4 Q. I'm just trying to find out when you</p> <p>5 say you tracked it, what did you look to to</p> <p>6 track it?</p> <p>7 A. Well, when it's released, if I'm on</p> <p>8 the trading desk, I'll look at it, and there</p> <p>9 will be a Reuters headline or something of that</p> <p>10 sort.</p> <p>11 If I'm on the phone with a dealer,</p> <p>12 they might share with me what it was.</p> <p>13 If I'm in my office, away from the</p> <p>14 trading desk, if it is a significant release,</p> <p>15 maybe a dealer might call me, but it would be a</p> <p>16 piece of information that I would be careful to</p> <p>17 make sure that I reviewed.</p> <p>18 Q. How often did that purchasing</p> <p>19 manager's release come out?</p> <p>20 A. It was a monthly release.</p> <p>21 Q. Besides the purchasing manager's</p> <p>22 release you mentioned, were you looking for any</p> <p>23 other releases that day?</p> <p>24 A. No.</p> <p>25 Q. Were you aware there was going to be a</p> | <p>1 A. No.</p> <p>2 Q. When did you become aware that</p> <p>3 Treasury was going to be making a refunding</p> <p>4 announcement on October 31, 2001?</p> <p>5 MR. SHOPE: Objection.</p> <p>6 A. I first became aware of it, I</p> <p>7 remember, from -- our trader John Cadogan</p> <p>8 mentioned it.</p> <p>9 Q. Do you know approximately what time of</p> <p>10 day that was?</p> <p>11 A. It was about between 9:30 and 10,</p> <p>12 about a quarter till.</p> <p>13 Q. About 9:45?</p> <p>14 A. (Witness nods).</p> <p>15 Q. What did Mr. Cadogan say?</p> <p>16 A. I don't remember specifically what he</p> <p>17 said. What I took away -- he made a comment</p> <p>18 that there was a quarterly refunding</p> <p>19 announcement at ten o'clock.</p> <p>20 Q. How did this come up?</p> <p>21 A. This came up in response to my comment</p> <p>22 that Mr. Davis had left a phone mail message</p> <p>23 where Mr. Davis had indicated something about</p> <p>24 there being an announcement at ten o'clock of a</p> <p>25 cancellation of the long bond.</p>                    |
| Page 159  | Page 161  |
| <p>1 GDP announcement that morning?</p> <p>2 A. As of what time?</p> <p>3 Q. Prior to 10 a.m. October 31st, were</p> <p>4 you aware that there was going to be a GDP</p> <p>5 announcement?</p> <p>6 A. I don't --</p> <p>7 Q. Let me rephrase.</p> <p>8 Prior to the time the announcement was</p> <p>9 made, were you aware that there was going to be</p> <p>10 a GDP announcement?</p> <p>11 A. No.</p> <p>12 Q. Do you know what time that</p> <p>13 announcement was made?</p> <p>14 A. I don't remember when they put out the</p> <p>15 GDP numbers.</p> <p>16 Q. Do you know if it was before 10 a.m.?</p> <p>17 A. I have -- I don't remember.</p> <p>18 Q. Were you aware there was going to be a</p> <p>19 Treasury refunding announcement on October 31,</p> <p>20 2001 prior to 9 a.m.?</p> <p>21 A. No.</p> <p>22 Q. When did you -- you testified you use</p> <p>23 Microsoft Outlook. Was there any function you</p> <p>24 used on there to remind you of announcement</p> <p>25 dates?</p>   | <p>1 Q. Before I talk about that voicemail,</p> <p>2 let me just find out, when Mr. Cadogan informed</p> <p>3 you that there was going to be a Treasury</p> <p>4 refunding announcement, was anyone else involved</p> <p>5 in that conversation?</p> <p>6 MR. SHOPE: Objection to the form.</p> <p>7 A. Involved in what way?</p> <p>8 Q. Was anyone else present when</p> <p>9 Mr. Cadogan made that statement that there was</p> <p>10 going to be a Treasury refunding announcement?</p> <p>11 A. Yes.</p> <p>12 Q. Who else?</p> <p>13 A. David Kennedy, Rick Smith, Jeffrey</p> <p>14 Kurinsky, other trading assistants in that end</p> <p>15 of the trading room.</p> <p>16 Q. What were the names of the other</p> <p>17 trading assistants?</p> <p>18 A. I believe one was Michael Conn,</p> <p>19 C-O-N-N. I believe one was Jody Nickerson. No,</p> <p>20 no, that's not her name. I can't recall the</p> <p>21 other names.</p> <p>22 Q. Were they all within -- were they all</p> <p>23 within earshot of Mr. Cadogan when he made this</p> <p>24 statement?</p> <p>25 A. Yes.</p> |

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| <p>1 Q. Was he talking to all of the people<br/>2 that you mentioned when he made this statement?<br/>3 A. This is a statement -- this was an<br/>4 exchange between the two of us. Others could<br/>5 well have overheard it.<br/>6 Q. So Mr. Cadogan was just talking -- was<br/>7 directing the statement to you?<br/>8 A. As I recall, we were looking at each<br/>9 other, maybe six feet apart having that -- and<br/>10 he added that piece of information that they<br/>11 were having a quarterly refunding announcement,<br/>12 and it was at ten o'clock.<br/>13 Q. Was there anyone else that Mr. Cadogan<br/>14 was directing that statement to beside you?<br/>15 MR. THEODOROU: Objection.<br/>16 A. I'm uncertain who he was trying to<br/>17 address it to. I know he was addressing it to<br/>18 me. I was chatting with him. I think he was --<br/>19 well, it was a general comment he was making, so<br/>20 I know he was addressing it to me.<br/>21 Q. Do you know if anyone else overheard<br/>22 the comment that Mr. Cadogan made?<br/>23 MR. THEODOROU: Objection.<br/>24 A. No.<br/>25 Q. Was there a 9 a.m. meeting for the</p> | <p>1 A. Not my personal line but possibly a<br/>2 direct -- possibly one of the general phone<br/>3 lines on our phone turret.<br/>4 Q. Who called whom?<br/>5 A. I received the phone call from one of<br/>6 the dealers.<br/>7 Q. Approximately what time did you<br/>8 receive this call?<br/>9 A. Some time between 9:30 and ten<br/>10 o'clock.<br/>11 Q. What was discussed during this call?<br/>12 I'm sorry.<br/>13 A. Ordinarily some time between 9:30 and<br/>14 10 of, quarter of.<br/>15 MR. ROSSETTI: 10 of 10?<br/>16 THE WITNESS: Yeah, yes.<br/>17 BY MS. WILLIAMS:<br/>18 Q. What did you discuss during this call?<br/>19 A. The broker was calling me to discuss<br/>20 that the market had been moving, and he had a<br/>21 possible explanation for it.<br/>22 He had heard talk that people on the<br/>23 Chicago Board of Trade thought that the long<br/>24 bond was going to be cancelled, and he was<br/>25 imparting that as a possible explanation for why</p>         |
| Page 163   | Page 165   |
| <p>1 Fixed Income Group on October 31, 2001?<br/>2 A. I don't recall specifically a 9 a.m.<br/>3 meeting that day.<br/>4 Q. So just to clarify, you don't recall<br/>5 attending a 9 a.m. meeting that day?<br/>6 A. I don't.<br/>7 Q. Do you recall participating in any<br/>8 telephone calls that morning, October 31, 2001?<br/>9 A. Yes.<br/>10 Q. What telephone calls do you recall<br/>11 participating in?<br/>12 A. I remember receiving a phone call from<br/>13 one of our dealers.<br/>14 Q. Which dealer?<br/>15 A. I don't remember. One of my principal<br/>16 government coverage guys. I can't remember<br/>17 specifically which one.<br/>18 Q. Do you recall where the dealer worked?<br/>19 A. I don't recall specifically which<br/>20 dealer it was. So the answer to that question<br/>21 is no.<br/>22 Q. What line did this call come in on?<br/>23 A. I don't remember.<br/>24 Q. Would it -- did it come in on a direct<br/>25 line versus your personal line?</p>   | <p>1 the market was drifting up that morning.<br/>2 Q. Do you know who on the Chicago<br/>3 Board -- excuse me.<br/>4 Do you know how the person that you<br/>5 were talking to learned about this information<br/>6 on the Chicago Board of Trade?<br/>7 A. No.<br/>8 Q. Did the person you were talking to<br/>9 work at this Chicago Board of Trade?<br/>10 A. I don't believe so.<br/>11 Q. Did the person you were talking to<br/>12 characterize the information, where you called<br/>13 it talk, on the Chicago Board of Trade as a<br/>14 rumor?<br/>15 A. Yeah, yes.<br/>16 Q. Do you recall if this person told you<br/>17 anything else during the conversation?<br/>18 A. That's all I can recall.<br/>19 Q. Prior to this conversation, what, if<br/>20 anything, had you noticed about the market?<br/>21 A. The market had been ticking up that<br/>22 morning.<br/>23 Q. And specifically what market are you<br/>24 referring to?<br/>25 A. The bond market. Specifically, the</p> |

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|--|--|
| <p>1 long bond had been moving up that morning at<br/>2 that point in time at least a quarter point with<br/>3 eight, 10 ticks.<br/>4 Q. And you said that this call came in<br/>5 between 9:30 and 9:50?<br/>6 A. Some time after 9:30. I don't know<br/>7 exactly what time.<br/>8 Q. Was it around 9:30?<br/>9 A. I don't know exactly what time.<br/>10 MS. WILLIAMS: I'd like to have<br/>11 this marked as Exhibit 9.<br/>12 (Exhibit 9 marked<br/>13 for identification)<br/>14 MR. SHOPE: Are there any<br/>15 particular numbers you're going to be referring<br/>16 to?<br/>17 MS. WILLIAMS: I'm going to be<br/>18 talking about page five.<br/>19 BY MS. WILLIAMS:<br/>20 Q. Do you recognize this document,<br/>21 Mr. Northern?<br/>22 A. Yes.<br/>23 Q. What is it?<br/>24 A. It's labeled Defendant Steven E.<br/>25 Northern's Responses to the Plaintiff US</p>  | <p>1 the conversation with the broker that morning?<br/>2 A. Yes.<br/>3 Q. What else was discussed?<br/>4 A. Apparently Treasury was going to shift<br/>5 to a monthly issuance of five years as opposed<br/>6 to a quarterly issuance.<br/>7 Q. And you agree that the conversation<br/>8 took place around 9:30 a.m.?<br/>9 A. Yes.<br/>10 Q. Prior to receiving this call, what, if<br/>11 anything, had you heard regarding Treasury's<br/>12 possible cancellation of a 30-year bond on<br/>13 October 31st?<br/>14 A. Prior to October 31, 2001?<br/>15 Q. No, no. On October 31st, prior to<br/>16 receiving this call, what, if anything, had you<br/>17 heard about the possible cancellation of the<br/>18 bond, just on that day?<br/>19 A. That morning?<br/>20 Q. Yes.<br/>21 A. Nothing that I recall.<br/>22 Q. What did you say in response to the<br/>23 broker's -- information that the broker gave you<br/>24 during this call?<br/>25 A. I don't recall.</p>  |
| Page 167   | Page 169   |
| <p>1 Securities and Exchange Commission's First Set<br/>2 of Interrogatories.<br/>3 Q. If I could refer you to page 15. And<br/>4 on the second half of the page, do you see your<br/>5 signature there, sir?<br/>6 A. Yes.<br/>7 Q. And it says, "I, Steven E. Northern,<br/>8 state under the penalty of perjury that the<br/>9 foregoing responses are true and correct."<br/>10 Did I read that correctly?<br/>11 A. Yes.<br/>12 Q. Okay. On page five, I'm at the first<br/>13 line, "Around 9:30 a.m. on October 31, 2001, I<br/>14 had a telephone conversation with a bond broker<br/>15 who informed me that there was information<br/>16 circulating on the Chicago Board of Trade that<br/>17 the Treasury was going to cancel the issuance of<br/>18 the 30-year bond and that Treasury was going to<br/>19 shift to a monthly issuance of five-year bonds<br/>20 rather than the quarterly issuance of five-year<br/>21 bonds."<br/>22 Did I read that correctly?<br/>23 A. Yes.<br/>24 Q. Does that refresh your recollection at<br/>25 all of anything else that was discussed during</p> | <p>1 Q. What was your reaction to this<br/>2 information?<br/>3 A. It was twofold. One is here we go<br/>4 again. We'd had a similar thing at the<br/>5 August refunding.<br/>6 And then it jogged my memory of what<br/>7 had happened at the quarterly refunding, which<br/>8 there had been wide anticipation at that point<br/>9 in time that the treasurer was going to announce<br/>10 the cancellation of the 30-year Treasury bond.<br/>11 Their arrangements that they were<br/>12 making was that it just didn't make sense to<br/>13 continue issuing them.<br/>14 So there was an expectation in<br/>15 August that they were going to announce the<br/>16 cancellation. So I did remember that.<br/>17 And I did remember also that the<br/>18 postmortem on -- because they didn't in fact<br/>19 announce that in August, postmortem was that<br/>20 they didn't do it because the fellow in charge<br/>21 while nominated hadn't yet been confirmed, and<br/>22 he might not yet have the -- I guess the sort of<br/>23 official ability to stand before the cameras and<br/>24 make that sort of an announcement, to the extent<br/>25 that he wanted to be the guy making that sort of</p> |

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| <p style="text-align: right;">Page 170</p> <p>1 announcement.</p> <p>2 Q. Do you recall if you'd received any</p> <p>3 calls from brokers prior to the August refunding</p> <p>4 conference?</p> <p>5 A. I don't recall.</p> <p>6 Q. When you say that a similar thing had</p> <p>7 happened at the August refunding, what do you</p> <p>8 mean?</p> <p>9 A. That there was a lot of talk about</p> <p>10 whether they were going to do it or not do it in</p> <p>11 terms of whether they were going to cancel</p> <p>12 issuance of 30 years or not do it. So there was</p> <p>13 a lot of speculation about that.</p> <p>14 This is an issue that had been</p> <p>15 outstanding for a long period of time, well over</p> <p>16 a year, and it dated to the prior</p> <p>17 administration.</p> <p>18 And in a sense the prior</p> <p>19 administration, this is my take on it, that sort</p> <p>20 of punted and left the issue to the new</p> <p>21 administration.</p> <p>22 Q. How did you become aware of the talks</p> <p>23 surrounding the August refunding?</p> <p>24 A. It was very -- I don't recall</p> <p>25 specifically. It was very widely talked about,</p> | <p style="text-align: right;">Page 172</p> <p>1 just repeat that, please?</p> <p>2 Q. Sure. I said did you not frequently</p> <p>3 get calls from individuals with rumors regarding</p> <p>4 what the market was going to do?</p> <p>5 A. You're confusing me with your notes.</p> <p>6 Q. Okay. Would you agree that you</p> <p>7 frequently got calls from individuals with</p> <p>8 rumors regarding what the market was going to</p> <p>9 do?</p> <p>10 A. No. I think it was extremely rare.</p> <p>11 Q. If I could refer you to Exhibit 2,</p> <p>12 page 118.</p> <p>13 MS. WILLIAMS: And if we could go</p> <p>14 off the record and change the tape.</p> <p>15 MR. THEODOROU: Can we just take a</p> <p>16 short break?</p> <p>17 MS. WILLIAMS: Sure.</p> <p>18 THE VIDEOGRAPHER: This marks the</p> <p>19 end of videotape number two in the deposition of</p> <p>20 Steven Northern.</p> <p>21 Going off the record, 2:32 p.m.</p> <p>22 (Recess taken)</p> <p>23 THE VIDEOGRAPHER: Here begins</p> <p>24 videotape number three in the deposition of</p> <p>25 Steven Northern.</p>          |
| <p style="text-align: right;">Page 171</p> <p>1 though.</p> <p>2 Q. Prior to the August refunding</p> <p>3 conference, do you recall there being any</p> <p>4 movement in the market on the morning of the</p> <p>5 conference?</p> <p>6 A. I don't.</p> <p>7 MR. SHOPE: I'm sorry, can I have</p> <p>8 that question and answer read back?</p> <p>9 (Record read)</p> <p>10 MR. SHOPE: Okay. Thank you.</p> <p>11 BY MS. WILLIAMS:</p> <p>12 Q. In the course of your work at MFS, how</p> <p>13 often would you receive calls of this nature,</p> <p>14 meaning the call that you got from the broker on</p> <p>15 the morning of October 31st --</p> <p>16 MR. THEODOROU: Objection.</p> <p>17 Q. -- regarding rumors about market</p> <p>18 activity?</p> <p>19 MR. THEODOROU: Objection.</p> <p>20 A. Rarely.</p> <p>21 Q. Do you not agree that you frequently</p> <p>22 got calls from individuals with rumors regarding</p> <p>23 what the market was going to do?</p> <p>24 MR. THEODOROU: Objection.</p> <p>25 A. What was your question? Cow could you</p>   | <p style="text-align: right;">Page 173</p> <p>1 On the record, 2:49 p.m.</p> <p>2 BY MS. WILLIAMS:</p> <p>3 Q. Mr. Northern, if you could read to</p> <p>4 yourself on Exhibit 2, page 117, line 19 through</p> <p>5 page 119, line --</p> <p>6 A. I'm sorry, page?</p> <p>7 Q. 117.</p> <p>8 A. Okay.</p> <p>9 Q. Line 19 through page 118, line 8, and</p> <p>10 let me know when you finished.</p> <p>11 (Pause)</p> <p>12 A. Okay.</p> <p>13 Q. I wanted to refer you to page 118, and</p> <p>14 I'm reading line four. "It's just the nature of</p> <p>15 business. We have people calling us frequently</p> <p>16 pounding the table that they're sure XYZ is</p> <p>17 going to happen, or they're sure you should do</p> <p>18 XYZ."</p> <p>19 And I wanted to know what you meant by</p> <p>20 that statement.</p> <p>21 A. We have people -- well, when I worked</p> <p>22 in the business there were people calling</p> <p>23 frequently, our insurer, the curve was going to</p> <p>24 flatten, which is jargon to say that the</p> <p>25 Treasury market yields with change in a certain</p> |

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| <p style="text-align: right;">Page 174</p> <p>1 manner, or that the Fed was at the next meeting<br/> 2 going to tighten 50 basis points, or that the<br/> 3 next CPI number was going to be .8.<br/> 4 You know, so we had people calling in<br/> 5 all the time who thought that, you know, they<br/> 6 had an analysis of how the market might react to<br/> 7 things that they were certain were going to<br/> 8 occur in their analysis, in their opinion<br/> 9 certain things were going to happen, and they<br/> 10 were darn sure of it.<br/> 11 At the end of the day, I think I say<br/> 12 that here, at the end of the day, we as<br/> 13 portfolio managers have to make our own analysis<br/> 14 of what we think, you know, the investment<br/> 15 environment is going to be going forward, and we<br/> 16 take the responsibility for structuring the<br/> 17 portfolios appropriately.<br/> 18 You can't rely on other people's<br/> 19 analysis. It's useful input. Often they're<br/> 20 darn sure, but they can also be darn wrong. And<br/> 21 if it's wrong, it's your responsibility as a<br/> 22 portfolio manager.<br/> 23 I don't blame them, but they call a<br/> 24 lot confident that such-and-such is going to<br/> 25 happen and, you know, you should do</p> | <p style="text-align: right;">Page 176</p> <p>1 work. I had several portfolios I was working to<br/> 2 restructure. I was doing trades, primarily<br/> 3 selling intermediate maturity or short maturity<br/> 4 notes and bonds in exchange for longer<br/> 5 maturities.<br/> 6 Q. Okay. You mentioned earlier you<br/> 7 received a voicemail from Peter Davis. Were you<br/> 8 doing this portfolio work prior to receiving<br/> 9 that voicemail?<br/> 10 A. Yes.<br/> 11 Q. Did you sell any intermediate<br/> 12 securities that day prior to receiving the<br/> 13 voicemail from Mr. Davis?<br/> 14 A. Yes.<br/> 15 Q. Did you purchase any longer term<br/> 16 securities that day prior to receiving the<br/> 17 voicemail from Mr. Davis?<br/> 18 A. No.<br/> 19 Q. What do you recall happening next?<br/> 20 MR. SHOPE: Next after what?<br/> 21 MS. WILLIAMS: He said that after<br/> 22 the call with the broker, he did some portfolio<br/> 23 work. I want to know what he recalls doing<br/> 24 thereafter.<br/> 25 A. At some point I was interrupted by</p>   |
| <p style="text-align: right;">Page 175</p> <p>1 such-and-such, you know, as a consequence of it.<br/> 2 Q. When you received this call from the<br/> 3 broker saying that -- relaying the rumor on the<br/> 4 floor of the Chicago Board of Trade, you said<br/> 5 that one reaction you had was that this was<br/> 6 similar to information you heard surrounding the<br/> 7 August refunding conference; is that right?<br/> 8 A. Yes.<br/> 9 Q. What, if anything, in your --<br/> 10 triggered in your mind after you received the<br/> 11 call from the broker on October 31st as to<br/> 12 whether Treasury was going to make a refunding<br/> 13 announcement that day?<br/> 14 A. It didn't -- I didn't have any thought<br/> 15 of a refunding -- quarterly refunding at that<br/> 16 point in time.<br/> 17 Q. How long did the call with the broker<br/> 18 last?<br/> 19 A. I don't remember. It was brief.<br/> 20 Q. By "brief," can you give me a<br/> 21 ballpark?<br/> 22 A. Less than two, three minutes.<br/> 23 Q. What happened -- what did you do after<br/> 24 you had this call with the broker?<br/> 25 A. As I recall, I was doing portfolio</p>   | <p style="text-align: right;">Page 177</p> <p>1 Kathy Graham who was our receptionist. She had<br/> 2 an issue related to a laptop that was going to<br/> 3 be picked up for servicing by Dell.<br/> 4 Q. How were you interrupted by<br/> 5 Ms. Graham?<br/> 6 A. She came to my desk and presented me<br/> 7 the problem that we were having, and Dell was to<br/> 8 come pick up this computer for servicing, and<br/> 9 she explained to me the complexity.<br/> 10 After 9/11, vendors -- pick up<br/> 11 companies were no longer allowed up into the<br/> 12 building, so the laptop would have to be brought<br/> 13 down to, I guess, a receiving area of the lobby.<br/> 14 Q. Okay. How long was this conversation<br/> 15 with Miss Graham?<br/> 16 A. I don't remember. I'd say it was<br/> 17 fairly brief, a few minutes.<br/> 18 Q. Besides you and Ms. Graham, was there<br/> 19 anyone else involved in this conversation?<br/> 20 A. No.<br/> 21 Q. And just to clarify, were you sitting<br/> 22 at your station on the high grade trading desk<br/> 23 when you had this conversation with Ms. Graham?<br/> 24 A. Yes.<br/> 25 Q. What happened after you had this</p> |

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| <p style="text-align: right;">Page 178</p> <p>1 conversation with Ms. Graham?</p> <p>2 A. I observed that on my phone, the</p> <p>3 little light was on that indicated there was a</p> <p>4 message on my telephone.</p> <p>5 Q. Did you recall receiving a call and</p> <p>6 letting it go to voicemail?</p> <p>7 A. No.</p> <p>8 Q. Let me ask you a question first about</p> <p>9 your purchase of the intermediate securities</p> <p>10 that morning.</p> <p>11 What, if any, information did you</p> <p>12 enter into the FITS system regarding those</p> <p>13 trades?</p> <p>14 A. Those weren't purchases. Those were</p> <p>15 sales.</p> <p>16 Q. For sales were you required to enter</p> <p>17 any information in the FITS system?</p> <p>18 A. Yes.</p> <p>19 Q. Did you enter any information in the</p> <p>20 FITS system?</p> <p>21 A. Yes. I entered the transactions. I</p> <p>22 believe there were three.</p> <p>23 Q. How long after doing the transactions</p> <p>24 did you enter the information in the FITS</p> <p>25 system?</p>   | <p style="text-align: right;">Page 180</p> <p>1 million, but I don't recall what all three were.</p> <p>2 Q. Why did you make those sales in the</p> <p>3 intermediate securities that morning?</p> <p>4 A. That morning I was restructuring the</p> <p>5 portfolios to give them more of a bias towards</p> <p>6 long maturity, 30-year treasuries, away from</p> <p>7 intermediate securities.</p> <p>8 So I was in the process of selling to</p> <p>9 raise cash to have the money to invest in longer</p> <p>10 maturity treasuries.</p> <p>11 Q. What happened after this -- oh, you</p> <p>12 mentioned that you noticed the voicemail light</p> <p>13 was on after your discussion with Ms. Graham.</p> <p>14 What did you do next?</p> <p>15 A. I reviewed the phone mail message that</p> <p>16 had been left.</p> <p>17 Q. And what was this voicemail message?</p> <p>18 A. It was a message from Peter Davis,</p> <p>19 Davis Capital.</p> <p>20 Q. What did Mr. Davis say in the</p> <p>21 voicemail message?</p> <p>22 A. I don't remember specifically. In</p> <p>23 substance what I took away was two things. One,</p> <p>24 that Peter Fisher had told him they would be</p> <p>25 cancelling the long bond; and two, that there</p> |
| <p style="text-align: right;">Page 179</p> <p>1 MR. SHOPE: Objection.</p> <p>2 A. I don't recall that it was after. I</p> <p>3 don't recall the sequence.</p> <p>4 Q. Do you recall if you gave verbal</p> <p>5 orders to sell those intermediate securities</p> <p>6 that morning?</p> <p>7 A. I don't recall what the process was</p> <p>8 for executing those trades.</p> <p>9 Q. Do you recall who the trader was that</p> <p>10 executed the trades?</p> <p>11 A. As we sit here now, no. We could</p> <p>12 review, but I don't recall.</p> <p>13 Q. Do you recall which portfolio the</p> <p>14 trades were made in?</p> <p>15 A. Yes.</p> <p>16 Q. Which ones?</p> <p>17 A. MIN, the Intermediate Income Trust;</p> <p>18 MMT, the Multi Market Income Trust; and MGF, the</p> <p>19 Government Markets Income Trust.</p> <p>20 To the best of my recollection, I</p> <p>21 think it's those three portfolios.</p> <p>22 Q. Do you recall how much -- what was the</p> <p>23 value that you sold in those intermediate</p> <p>24 securities that morning?</p> <p>25 A. I don't. I believe two were for 4</p> | <p style="text-align: right;">Page 181</p> <p>1 was a press release embargo until ten o'clock.</p> <p>2 Q. Did Mr. Davis -- you said that they</p> <p>3 would be cancelling the long bond. Did</p> <p>4 Mr. Davis mention Treasury in the voicemail?</p> <p>5 A. I don't remember specifically what his</p> <p>6 words were except the words that Peter Fisher</p> <p>7 told me this I think is what he said.</p> <p>8 Q. What, if any, understanding did you</p> <p>9 have as to who they were when you say "they</p> <p>10 would be cancelling the long bond"?</p> <p>11 A. The government.</p> <p>12 Q. Any particular part of the government?</p> <p>13 A. The Treasury Department.</p> <p>14 Q. How long was the voicemail message?</p> <p>15 A. It was less than a minute.</p> <p>16 Q. How many times did you listen to the</p> <p>17 voicemail that morning?</p> <p>18 A. I listened to it once.</p> <p>19 Q. What did you do after listening to the</p> <p>20 voicemail?</p> <p>21 A. I deleted it.</p> <p>22 Q. Why did you delete it?</p> <p>23 A. To avoid having a lot of clutter in my</p> <p>24 E mail inbox.</p> <p>25 Q. Voicemail?</p>   |

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| <p>1 A. My -- clutter in my voicemail inbox.<br/> 2 After a week's vacation, the thing<br/> 3 would max out. You had to keep it clean.<br/> 4 Q. Do you know what time Mr. Davis's --<br/> 5 what time you retrieved Mr. Davis's voicemail?<br/> 6 A. I don't have a recollection of when I<br/> 7 retrieved his voicemail message.<br/> 8 Q. Do you know what time Mr. Davis left<br/> 9 the voicemail?<br/> 10 A. I think it was left at 9:37.<br/> 11 Q. Why do you think it was left at 9:37?<br/> 12 A. After review -- I reviewed the phone<br/> 13 logs at some point.<br/> 14 MS. WILLIAMS: I'd like to have<br/> 15 this marked as Exhibit 10.<br/> 16 (Exhibit 10 marked<br/> 17 for identification)<br/> 18 BY MS. WILLIAMS:<br/> 19 Q. Do you recognize this document,<br/> 20 Mr. Nothern?<br/> 21 A. No.<br/> 22 Q. At the top the document says, "Mass.<br/> 23 Financial Services Department Report From<br/> 24 10/31/2001 to 10/31/2001."<br/> 25 Do you see that, sir?</p> | <p>1 DID."<br/> 2 Do you see that?<br/> 3 A. Yes.<br/> 4 Q. And the calling number is<br/> 5 "2023657624".<br/> 6 Do you see that?<br/> 7 A. Yes.<br/> 8 Q. Do you know whose phone number was<br/> 9 202-365-7624?<br/> 10 A. No.<br/> 11 Q. Do you know what Mr. Davis's phone<br/> 12 number was?<br/> 13 A. No.<br/> 14 Q. Did you ever look at any MFS phone<br/> 15 records regarding October 31, 2001?<br/> 16 A. I don't remember having reviewed the<br/> 17 phone documents.<br/> 18 Q. Back to the substance of Mr. Davis's<br/> 19 voicemail.<br/> 20 Did Mr. Davis say anything about the<br/> 21 five-year note in his voicemail that you recall?<br/> 22 MR. SHOPE: I'm sorry, did he say<br/> 23 anything about the what?<br/> 24 MS. WILLIAMS: Five-year note.<br/> 25 A. Not that I recall.</p>  |
| Page 183  | Page 185   |
| <p>1 A. Yes.<br/> 2 Q. Then on the right-hand side, the<br/> 3 fourth line down, I see "Station 55887, Steven<br/> 4 E. Nothern."<br/> 5 Do you see that?<br/> 6 A. Yes.<br/> 7 Q. Do you know what 55887 refers to?<br/> 8 A. It looks like it refers to my<br/> 9 extension, 5887. This indicates 55887. My<br/> 10 extension was 5887. I think to dial internally<br/> 11 you had to add a five, so that was my internal<br/> 12 extension.<br/> 13 Q. Then the next -- after the line of<br/> 14 stars and the headings, I see information<br/> 15 underneath certain headings. First I see the<br/> 16 date "10/31/2001".<br/> 17 Do you see that, sir?<br/> 18 A. Yes.<br/> 19 Q. And then the time "9:37a".<br/> 20 Do you see that?<br/> 21 A. Yes.<br/> 22 Q. Under "dialed number" I see "55887".<br/> 23 Do you see that?<br/> 24 A. Yes.<br/> 25 Q. Under "Call class" I see "Inbound</p>   | <p>1 Q. The 10-year note, do you recall<br/> 2 Mr. Davis mentioning that in his voicemail?<br/> 3 A. I don't recall hearing that.<br/> 4 Q. Did Mr. Davis mention anything about<br/> 5 buybacks in his voicemail?<br/> 6 A. I don't recall that.<br/> 7 Q. Did you listen to the voicemail using<br/> 8 speakerphone?<br/> 9 MR. THEODOROU: I beg your pardon?<br/> 10 What was the question?<br/> 11 BY MS. WILLIAMS:<br/> 12 Q. Did you listen to the voicemail using<br/> 13 speakerphone?<br/> 14 A. No, I didn't.<br/> 15 Q. Do you know what -- scratch that.<br/> 16 Did this voicemail come into your<br/> 17 private, private meaning your direct, line?<br/> 18 A. Yes.<br/> 19 Q. Who did you understand Mr. Fisher to<br/> 20 be on October 31, 2001?<br/> 21 A. I understood Mr. Fisher to be a<br/> 22 low-level political appointee in the debt<br/> 23 finance area.<br/> 24 Q. When you say "low level," what do you<br/> 25 mean?</p> |

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| <p>1 A. I think he was one of the lowest<br/>2 ranking appointees that the president gets to<br/>3 make in the Treasury.<br/>4 Q. Do you know if there were any other<br/>5 political appointees who were under Mr. Fisher<br/>6 in terms of hierarchy?<br/>7 A. I don't.<br/>8 Q. Have you --<br/>9 A. Excuse me.<br/>10 Q. Sorry.<br/>11 A. At what point in time?<br/>12 Q. As of October 31, 2001.<br/>13 A. No, I don't.<br/>14 Q. Did you know when Mr. Davis's<br/>15 appointment had been confirmed? Did you know as<br/>16 of October 31, 2001?<br/>17 MR. SHOPE: You mean Mr. Fisher?<br/>18 MS. WILLIAMS: Mr. Fisher.<br/>19 BY MS. WILLIAMS:<br/>20 Q. I'm sorry, let me restate that again.<br/>21 As of October 31, 2001, did you know<br/>22 when Mr. Fisher had been confirmed to his<br/>23 appointment at Treasury?<br/>24 A. I had heard that he had been<br/>25 confirmed.</p>   | <p>1 Q. When you received Mr. Davis's<br/>2 voicemail on October 31st, did you understand<br/>3 Mr. Fisher to be a Treasury employee who would<br/>4 have access to information about Treasury's<br/>5 cancellation of the 30-year bond?<br/>6 MR. THEODOROU: Objection.<br/>7 A. Just please repeat that.<br/>8 Q. Sure.<br/>9 When you received Mr. Davis's<br/>10 voicemail on October 31st, did you have an<br/>11 understanding as to whether Mr. Fisher was a<br/>12 Treasury employee who would have access to<br/>13 information regarding the cancellation of the<br/>14 30-year bond?<br/>15 MR. THEODOROU: Objection.<br/>16 A. Yes.<br/>17 Q. You stated that you came away from the<br/>18 voicemail with two understandings, and one was<br/>19 that there would be -- one was that Mr. Davis<br/>20 had learned from Peter Fisher that they were<br/>21 going to cancel the 30-year bond.<br/>22 What was the second understanding?<br/>23 A. As I just stated?<br/>24 Q. Yes.<br/>25 A. There was going to be a press release</p> |
| Page 187   | Page 189  |
| <p>1 Q. Do you know if he had been confirmed<br/>2 between the August refunding and the<br/>3 October refunding?<br/>4 A. Yes.<br/>5 Q. How did you learn that Mr. Fisher had<br/>6 been confirmed?<br/>7 A. I don't recall.<br/>8 Q. Do you know what Mr. Fisher's job was<br/>9 before he came to Treasury?<br/>10 A. I believe he worked for the New York<br/>11 Fed.<br/>12 Q. Do you know what his position was at<br/>13 the New York Fed?<br/>14 A. I don't.<br/>15 Q. How do you know Mr. Fisher worked for<br/>16 the New York Fed?<br/>17 A. I believe he did. I don't know that<br/>18 for certain.<br/>19 I think he was involved in the<br/>20 meetings surrounding the bail out of long-term<br/>21 capital when hedge fund sort of melted down. I<br/>22 think the New York Fed did get involved. I<br/>23 think McDonough was out of town. I think<br/>24 Mr. Fisher was involved in coordinating the<br/>25 meetings, but I could be wrong.</p> | <p>1 embargo until ten o'clock.<br/>2 Q. What did you understand would be<br/>3 embargoed?<br/>4 A. A press release.<br/>5 Q. Anything else?<br/>6 A. No.<br/>7 Q. Why did you believe a press release<br/>8 would be embargoed?<br/>9 A. I believe that's what he indicated.<br/>10 That's what I took away from what I heard.<br/>11 Q. What did you understand the press<br/>12 release would contain?<br/>13 A. By inference, that it would contain<br/>14 information that Peter Fisher had just given<br/>15 him.<br/>16 Q. Which was what?<br/>17 A. That they would be cancelling the long<br/>18 bond.<br/>19 Q. What, if any, communications had you<br/>20 had with Mr. Davis prior to October 31, 2001<br/>21 regarding his providing you with -- regarding<br/>22 embargoes?<br/>23 Had you had any conversation with<br/>24 Mr. Davis before October 31, 2001 about<br/>25 embargoes?</p>   |

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| <p>1 MR. THEODOROU: Objection.</p> <p>2 A. Not that I can recall.</p> <p>3 Q. Before you listened to this voicemail,</p> <p>4 had you seen any information on any wire</p> <p>5 services about Treasury's cancellation of the</p> <p>6 long bond?</p> <p>7 A. That morning?</p> <p>8 Q. Yes.</p> <p>9 A. No.</p> <p>10 Q. Did you -- had you received any</p> <p>11 information from any other source, setting aside</p> <p>12 this conversation you had with the broker, had</p> <p>13 you received any information from any other</p> <p>14 source about Treasury's cancellation of the long</p> <p>15 bond?</p> <p>16 MR. SHOPE: This is as of the time</p> <p>17 he received the voicemail?</p> <p>18 MS. WILLIAMS: The voicemail.</p> <p>19 MR. SHOPE: The voicemail message?</p> <p>20 MS. WILLIAMS: Yes.</p> <p>21 BY MS. WILLIAMS:</p> <p>22 Q. I understand you had a call with a</p> <p>23 broker, and then you received this voicemail.</p> <p>24 Had you heard any other information from any</p> <p>25 other sources --</p>  | <p>1 Mr. Cadogan.</p> <p>2 Q. What happened next?</p> <p>3 A. In terms of?</p> <p>4 Q. You said you went over to</p> <p>5 Mr. Kennedy's station to convey this</p> <p>6 information. What did you do when you got to</p> <p>7 Mr. Kennedy's station?</p> <p>8 A. After relaying the information to him?</p> <p>9 Q. Did you relay information to him?</p> <p>10 When you said you went over to his station to</p> <p>11 relay the information, did you actually relay</p> <p>12 the information?</p> <p>13 A. Yes, I did.</p> <p>14 Q. What did you say?</p> <p>15 A. I told him that I had gotten this</p> <p>16 message from Mr. Davis, that the Treasury would</p> <p>17 be cancelling the long bond, and I believed that</p> <p>18 they would be announcing it at 10.</p> <p>19 And I volunteered that I would --</p> <p>20 I think then he asked me a question,</p> <p>21 you know, what are we going to do about this?</p> <p>22 I informed him that I was buying 25</p> <p>23 million 30-year bonds. And he volunteered that</p> <p>24 he would be buying a similar amount.</p> <p>25 Mr. Kurinsky volunteered that he would</p> |
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| <p>1 MR. SHOPE: As of the time --</p> <p>2 Q. -- as of the time you received the</p> <p>3 voicemail?</p> <p>4 A. On that morning?</p> <p>5 Q. On that morning.</p> <p>6 A. No.</p> <p>7 Q. What did you do after you received</p> <p>8 Mr. Davis's voicemail?</p> <p>9 A. I remember observing the market. And</p> <p>10 the market had been -- continued to move up that</p> <p>11 morning.</p> <p>12 And I got up and went over to</p> <p>13 Mr. Kennedy's desk to relay to him and my</p> <p>14 colleagues what I just heard from Mr. Davis and</p> <p>15 to share with them what I would be transacting.</p> <p>16 I was going to be buying some long bonds.</p> <p>17 Q. Was Mr. Kennedy at his desk when you</p> <p>18 went over to talk to him?</p> <p>19 A. Yes.</p> <p>20 Q. You said you went to share with</p> <p>21 Mr. Kennedy and colleagues. What other</p> <p>22 colleagues are you referring to?</p> <p>23 A. I'm referring to colleagues that were</p> <p>24 on the trading desk at the time, so it would be</p> <p>25 Rick Smith, David Kennedy, Mr. Kurinsky, and</p> | <p>1 be buying 10 million, I believe, and Mr. Smith,</p> <p>2 that he'd be buying 5 million.</p> <p>3 Q. Was your statement regarding</p> <p>4 Mr. Davis's voicemail directed to Mr. Kennedy,</p> <p>5 Mr. Kurinsky, and Mr. Smith?</p> <p>6 A. Yes.</p> <p>7 Q. And was it also directed at</p> <p>8 Mr. Cadogan?</p> <p>9 A. Yes. It was for the group.</p> <p>10 Mr. Kennedy sits right in the middle basically</p> <p>11 of those, so strategically speaking, the best</p> <p>12 place to stand if you were going to pass on some</p> <p>13 information to the group without raising my</p> <p>14 voice.</p> <p>15 Q. Was Mr. Vaream at the desk when you</p> <p>16 made this statement to the group regarding</p> <p>17 Mr. Davis's voicemail?</p> <p>18 A. I believe not.</p> <p>19 Q. Besides Mr. Kennedy who you said asked</p> <p>20 what are we going to do about this, did anyone</p> <p>21 else make any comments?</p> <p>22 A. At what point?</p> <p>23 Q. After you conveyed the information you</p> <p>24 had received from Mr. Davis's voicemail.</p> <p>25 A. Mr. Kurinsky said he was going to buy</p>                |

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| <p>1 10 million, and Mr. Smith said he would be<br/>2 buying 5 million bonds.<br/>3 Q. What, if anything, did you tell the<br/>4 group during this conversation about Peter<br/>5 Fisher?<br/>6 A. I believe that Peter Fisher had -- I<br/>7 actually don't recall specifically. I believe<br/>8 that Davis had said that -- I actually don't<br/>9 recall.<br/>10 Q. What, if anything, did you say at this<br/>11 time about embargo?<br/>12 A. I don't recall bringing up embargo.<br/>13 Q. What, if anything, did you mention<br/>14 about a press release?<br/>15 A. At that point in time?<br/>16 Q. Yes.<br/>17 A. When I was speaking with Mr. Kennedy?<br/>18 Q. And the group, yes.<br/>19 A. I didn't mention -- I think I<br/>20 mentioned there would be -- they were going to<br/>21 be announcing it at 10. I don't think I<br/>22 mentioned a press release.<br/>23 Q. At the time that you told Mr. Kennedy<br/>24 and the group this information that you received<br/>25 from Mr. Davis, had you heard from Mr. Cadogan</p>   | <p>1 I think I might have shared with them<br/>2 that I'd heard that, and I think they confirmed<br/>3 that they also had heard that.<br/>4 Q. When you say "they," is there any<br/>5 particular person who you recall confirming that<br/>6 they'd heard about rumors?<br/>7 A. I don't recall.<br/>8 Q. What happened after you all stated how<br/>9 much of the 30-year bond you were going to<br/>10 purchase?<br/>11 A. I believe John Cadogan summed up, you<br/>12 know, what the total amount would be amongst us,<br/>13 and we authorized him to go ahead and make the<br/>14 purchase.<br/>15 Q. At what I point did Mr. Cadogan tell<br/>16 you there was going to be a Treasury refunding<br/>17 announcement at 10?<br/>18 A. I'm not certain. I believe it was<br/>19 subsequent to him starting to work on placing<br/>20 the order, but I'm not certain.<br/>21 Q. I might have asked this before, but I<br/>22 forgot. When Mr. Cadogan made the statement<br/>23 about there being a Treasury refunding<br/>24 announcement at 10 a.m., I know you said it was<br/>25 directed to you, was it directed to anyone else</p> |
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| <p>1 the Treasury was going to be announcing its<br/>2 refunding needs at 10?<br/>3 A. You have to rephrase that. Can you<br/>4 just repeat that?<br/>5 Q. Sure.<br/>6 You previously testified that you<br/>7 learned about the Treasury refunding<br/>8 announcement, that that was going to be made on<br/>9 October 31st from Mr. Cadogan; is that right?<br/>10 A. Yes.<br/>11 Q. And I wanted to know at the time you<br/>12 had your conversation with Mr. Kennedy and the<br/>13 other colleagues to convey the information you<br/>14 got from Mr. Davis's voicemail, had you already<br/>15 been told by Mr. Cadogan the Treasury was having<br/>16 a refunding announcement?<br/>17 A. I don't think so. I believe not.<br/>18 Q. Besides stating that they were going<br/>19 to buy certain amounts of bonds, what, if<br/>20 anything, did Mr. Kennedy, Kurinsky, Smith, or<br/>21 Cadogan say when you told them about Mr. Davis's<br/>22 voicemail?<br/>23 A. I believe we discussed the fact that<br/>24 we'd heard rumors from the Board of Trade that<br/>25 morning to the same -- exactly the same effect.</p> | <p>1 on the high grade trading desk?<br/>2 A. Not to my knowledge. I was looking at<br/>3 him the way that we are looking at each other<br/>4 right now, so we were -- I know we were<br/>5 communicating, as I was communicating to<br/>6 Mr. Kennedy in a manner that everyone could<br/>7 share in that information if they were<br/>8 interested in listening, I believe he was doing<br/>9 exactly the same.<br/>10 Q. Do you recall where you were standing<br/>11 when Mr. Cadogan informed you about the<br/>12 refunding announcement?<br/>13 A. Yes.<br/>14 Q. Where were you?<br/>15 A. I was standing.<br/>16 Q. Do you want to look at, I guess it's<br/>17 Exhibit 4?<br/>18 A. I was standing behind or next to<br/>19 Mr. Kennedy in 243 on your diagram Exhibit 4.<br/>20 Q. So Mr. Kennedy was either in front of<br/>21 you or next to you when Mr. Cadogan made that<br/>22 statement?<br/>23 A. Yes.<br/>24 Q. Do you know if Mr. Kennedy was sitting<br/>25 when Mr. Cadogan made the statement?</p>  |

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| <p style="text-align: right;">Page 198</p> <p>1 A. Yes, he was sitting.</p> <p>2 Q. After Mr. Cadogan made the statement,</p> <p>3 what, if any, discussion did you have about the</p> <p>4 fact the Treasury was announcing its refunding</p> <p>5 needs at 10 a.m.?</p> <p>6 A. I think that's when I first</p> <p>7 understood, and I reflected this to Mr. Cadogan,</p> <p>8 that, oh, that's what Davis was talking about,</p> <p>9 press release embargo until 10. He must have</p> <p>10 been referring to the quarterly refunding.</p> <p>11 Q. Is there any other discussion?</p> <p>12 A. No. For me it was, oh. It was one of</p> <p>13 those V-8 moments, oh, that's what he was</p> <p>14 talking about.</p> <p>15 Q. Do you recall if any other person on</p> <p>16 the high grade trading desk said anything in</p> <p>17 response to Mr. Cadogan's statement about the</p> <p>18 refunding being made at 10?</p> <p>19 A. No.</p> <p>20 Q. Just to clarify, when did you make up</p> <p>21 your mind that you were going to place a trade</p> <p>22 in a 30-year bond on the morning of</p> <p>23 October 31st?</p> <p>24 MR. SHOPE: Objection.</p> <p>25 A. This is -- I was restructuring the</p> | <p style="text-align: right;">Page 200</p> <p>1 A. From a portfolio point of view, I was</p> <p>2 shifting from intermediate securities towards</p> <p>3 the 30-year maturities.</p> <p>4 The fact that the market was running</p> <p>5 that morning kind of precipitated the issue.</p> <p>6 Q. How so?</p> <p>7 A. Well, the market was running up at</p> <p>8 price. I had already done some selling. I had</p> <p>9 some cash in some of the -- I believe in some of</p> <p>10 the Open Income Securities Fund. And if I</p> <p>11 waited, I was going to be buying those bonds as</p> <p>12 at a higher price, so it would not be good for</p> <p>13 the portfolios or the shareholders.</p> <p>14 Q. Was this order that you put in for 25</p> <p>15 million long bonds, was that the first trade in</p> <p>16 the 30-year bond you did on the morning of</p> <p>17 October 31st?</p> <p>18 A. Yes. That was my first buy</p> <p>19 transaction.</p> <p>20 Q. You said you'd noticed the market was</p> <p>21 moving. What did you use to check the market</p> <p>22 that morning?</p> <p>23 A. The monitors that I had in front of</p> <p>24 me.</p> <p>25 Q. Which ones?</p>  |
| <p style="text-align: right;">Page 199</p> <p>1 portfolios. I hadn't made up my mind earlier.</p> <p>2 My view for a couple of weeks was that</p> <p>3 the long bond was attractive, and this is work I</p> <p>4 needed to get done before Thursday and Friday</p> <p>5 that week, for some reasons we didn't get into.</p> <p>6 But that was my -- that was on my agenda of</p> <p>7 things to do that morning.</p> <p>8 So specifically when I arrived at that</p> <p>9 decision, is that your question?</p> <p>10 Q. Yes.</p> <p>11 A. This was -- I was in the middle of</p> <p>12 restructuring the portfolios a couple of weeks.</p> <p>13 I had already done some of these</p> <p>14 transactions on prior days, and I was continuing</p> <p>15 that work that morning. It was my work for that</p> <p>16 morning.</p> <p>17 Q. What factored into your decision?</p> <p>18 A. That the long bond was cheap and</p> <p>19 attractive?</p> <p>20 Q. Anything else?</p> <p>21 A. No. I'm asking you a question. I'm</p> <p>22 sorry.</p> <p>23 Q. What factored into your decision to</p> <p>24 trade in the 30-year bond on the morning of</p> <p>25 October 31st?</p>  | <p style="text-align: right;">Page 201</p> <p>1 A. I don't remember specifically. It</p> <p>2 would be either Reuters or Bloomberg or a</p> <p>3 similar type of price kind of service, you know.</p> <p>4 Q. You testified that you had noticed the</p> <p>5 market prior to the call with the broker who</p> <p>6 conveyed the information about the rumor on the</p> <p>7 Chicago Board of Trade.</p> <p>8 Prior to trading in the long bond, did</p> <p>9 you ever check the market again?</p> <p>10 A. Yes. Not that I can recall</p> <p>11 specifically sitting here, obviously, but, yeah,</p> <p>12 if I'm at the trading desk, I'm working on the</p> <p>13 portfolios, something seems to be going on in</p> <p>14 the market, I'm probably watching pretty</p> <p>15 frequently.</p> <p>16 Q. Do you recall checking the market</p> <p>17 after you received the voicemail from Mr. Davis</p> <p>18 and prior to placing your order for 25 million?</p> <p>19 A. I don't recall specifically, but I'm</p> <p>20 sure I did. In all likelihood, as I was</p> <p>21 listening to the message, I was looking at the</p> <p>22 market.</p> <p>23 Q. What happened after Mr. Cadogan, you</p> <p>24 said, combined the orders and executed the</p> <p>25 trade?</p> |

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| <p>1 MR. SHOPE: The question is what<br/>2 happened next?<br/>3 BY MS. WILLIAMS:<br/>4 Q. What happened? What did you do next?<br/>5 A. At sorry, at what point?<br/>6 Q. You said that Mr. Cadogan combined the<br/>7 orders and executed the trade. And then I guess<br/>8 you said that some time around there he<br/>9 mentioned the Treasury refunding.<br/>10 MR. SHOPE: Objection. That's not<br/>11 his testimony. I think he said that he began<br/>12 entering or placing the trade.<br/>13 MS. WILLIAMS: Right. Which is why<br/>14 I meant some time around the time of -- I<br/>15 believe his testimony was he couldn't recall<br/>16 exactly when the statement was made.<br/>17 Q. And I want to know what else do you<br/>18 recall happening that morning? What happened<br/>19 next?<br/>20 A. When John was working on the trade, we<br/>21 had that exchange. After that, I headed back<br/>22 towards my desk.<br/>23 And as I was doing that, I think I<br/>24 made one or two comments to Mr. Kennedy.<br/>25 Q. What comments did you make to</p>  | <p>1 of Trade.<br/>2 They had -- Fisher apparently told<br/>3 Davis and, you know, and others, I don't know<br/>4 how many, but I knew he told Davis, and there<br/>5 was a scheduled press release at ten o'clock.<br/>6 I just wondered was there an issue of<br/>7 fairness. Is this a way to run a railroad<br/>8 basically is what I was saying.<br/>9 Q. When you say the Treasury had spilled<br/>10 the information to the Chicago Board of Trade,<br/>11 what do you base that statement on?<br/>12 A. Well, clearly some people on the Board<br/>13 of Trade had this information. The market was<br/>14 trading up based on something.<br/>15 The call I got from the broker and the<br/>16 call I got from Mr. Davis corroborated what the<br/>17 reason was.<br/>18 Q. Was your understanding that the fact<br/>19 the Treasury was going to cancel the 30-year<br/>20 bond had been made public?<br/>21 A. Can you just repeat that, please?<br/>22 Q. Yes.<br/>23 Was it your understanding that the --<br/>24 you had information from Mr. Davis the Treasury<br/>25 was going to cancel the 30-year bond.</p> |
| Page 203  | Page 205   |
| <p>1 Mr. Kennedy?<br/>2 A. I believe one was I wonder about the<br/>3 ethics of all this.<br/>4 And the other, I made sort of a joke<br/>5 to him in that it will probably turn out that<br/>6 the purchasing manager's number at 10 is a<br/>7 bigger deal than this.<br/>8 Q. When you made the comment I wonder<br/>9 about the ethics of all this, was it directed to<br/>10 anyone besides Mr. Kennedy?<br/>11 A. As I best remember, I think it was a<br/>12 general comment I made. I just tossed it out to<br/>13 see if anybody had any thoughts.<br/>14 Q. Where were you when you made this<br/>15 comment?<br/>16 A. I was -- well, I had been adjacent to<br/>17 Mr. Kennedy, and I was going back towards my<br/>18 desk. I couldn't tell you how far towards my<br/>19 desk I'd gotten, whether it was half a step or<br/>20 three steps, I don't know the answer.<br/>21 Q. And what did you mean when you said I<br/>22 wonder about the ethics of all this?<br/>23 A. It was a question of fairness. The<br/>24 Treasury clearly put -- spilled this information<br/>25 out. They spilled it out to the Chicago Board</p> | <p>1 Was it your understanding when you<br/>2 received the voicemail that that information was<br/>3 public?<br/>4 A. I had no doubt in my mind that it was<br/>5 public. The information at that point had the<br/>6 look, touch, and feel of public information.<br/>7 The market had moved half a point, three<br/>8 quarters of a point. It was digesting, by all<br/>9 appearances, this information.<br/>10 Q. What was your understanding of who in<br/>11 the public had received the information?<br/>12 A. To my knowledge at that point, people<br/>13 on the Board of Trade, Mr. Davis, us at MFS.<br/>14 That's the knowledge I had.<br/>15 Q. And I understand how you received the<br/>16 information. What was your understanding as to<br/>17 how other people had received the information?<br/>18 A. I don't know.<br/>19 Q. Do you recall any information, similar<br/>20 type of information in the past that --<br/>21 MS. WILLIAMS: Maybe we could take<br/>22 a short break.<br/>23 THE WITNESS: I'm fine. Just a<br/>24 little bit of water will be fine.<br/>25 MS. WILLIAMS: Okay.</p>              |

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| <p>1 MR. THEODOROU: Do you want to take<br/>2 a break?<br/>3 MR. ROSSETTI: Yes.<br/>4 THE VIDEOGRAPHER: Going off the<br/>5 record, 3:33 p.m.<br/>6 (Recess taken)<br/>7 THE VIDEOGRAPHER: On the record,<br/>8 3:44 p.m.<br/>9 BY MS. WILLIAMS:<br/>10 Q. Okay. We're back on the record.<br/>11 Mr. Northern, you mentioned that you<br/>12 had -- that you were -- you had a strategy of<br/>13 shifting from short and intermediate securities<br/>14 to longer term securities prior to October 31st,<br/>15 and I wanted to know, why you were doing that?<br/>16 A. I thought the 30-year Treasury<br/>17 represented value.<br/>18 Q. Why?<br/>19 A. A little bit technical, if you'll<br/>20 allow.<br/>21 Q. Sure.<br/>22 A. 2001 we were in recession. What<br/>23 happened with 9/11 is it basically created from<br/>24 an economic point of view, it created a hole.<br/>25 People just stopped doing things. Planes were</p>  | <p>1 What it also meant is that because<br/>2 economic activity clearly has taken a hit,<br/>3 already weak inflation pressures were going to<br/>4 be weaker, and in point of fact that's what<br/>5 happened in the next two or three years, the Fed<br/>6 was very concerned about deflation because<br/>7 inflation -- you know, the pace of economic<br/>8 activity and demand was such that inflation<br/>9 pressures were absent, and that's why the Fed in<br/>10 this past cycle ended up lowering rates as far<br/>11 as it did.<br/>12 What it meant for me strategically in<br/>13 the portfolios, that we were going to come to<br/>14 the end of the cycle of the weakness in the<br/>15 economy, and the market would start looking<br/>16 forward to the next step, the next cycle, which<br/>17 is a growth cycle.<br/>18 In a growth cycle with weak inflation,<br/>19 the best performance securities are probably<br/>20 going to be the longer end of the -- the 30-year<br/>21 treasuries is probably going to be the best<br/>22 performer because of lowering inflation<br/>23 expectations, the bond benefits from that, and<br/>24 the -- if rates are going to bottom out, it's<br/>25 going to be at the short end, and eventually</p> |
| Page 207   | Page 209   |
| <p>1 grounded.<br/>2 So clearly the economy missed a beat,<br/>3 and it was going to create a hole in the data,<br/>4 which is to say that the statistics were going<br/>5 to be abnormally weak employment and just<br/>6 measures of economic activity.<br/>7 We didn't know yet how weak because in<br/>8 October we received the data from September, but<br/>9 it's a half month. And at the end of October we<br/>10 were going to start the first day of November,<br/>11 which was Friday of the week we're talking about<br/>12 now, we were going to get the employment report<br/>13 for October.<br/>14 So we were going to start getting the<br/>15 whole month -- the first whole month post 9/11.<br/>16 In a sense we were going to stick a thermometer<br/>17 in the bird and see, you know, kind of what the<br/>18 pace of the economic activity was.<br/>19 My view is that that might actually<br/>20 precipitate the end of the recession because the<br/>21 growth had been so weak around this period<br/>22 because of this event, that growth after that<br/>23 fact would actually start going up. So it was<br/>24 in a sense potentially we were in the middle --<br/>25 we were at a turning point in the economy.</p> | <p>1 short rates will start to drift higher as the<br/>2 economy begins to accelerate.<br/>3 That's sort of the general notion of<br/>4 how, you know, interest rates, different<br/>5 maturities can move differently depending on<br/>6 where you are in the business cycle.<br/>7 I felt we were at that point possibly<br/>8 at a turning point in the business cycle that<br/>9 would represent a turning point in the way we<br/>10 structured the portfolios.<br/>11 In a weakening environment, you want<br/>12 to own a lot of intermediates because the feds<br/>13 are lowering rates, short-term, short-maturity<br/>14 rates are being dragged down along with that.<br/>15 In a stable economy, growing economy,<br/>16 those rates can go up, and those bonds wouldn't<br/>17 perform as well as bonds in the longer end of<br/>18 the market. Long rates might go up, but they<br/>19 probably wouldn't go up as much.<br/>20 What it means, if you digest it down<br/>21 to a portfolio strategy level, it means you want<br/>22 to start favoring 30-year bonds over five-year<br/>23 notes.<br/>24 Q. Did you develop this strategy before<br/>25 9/11?</p>   |

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| <p>1 A. And to finish, if I can.</p> <p>2 Q. Oh, I'm sorry.</p> <p>3 A. I also had a general view that the</p> <p>4 bond was cheap, was an attractive place to</p> <p>5 invest from a value point of view,</p> <p>6 representative value.</p> <p>7 Part of it related to the government</p> <p>8 surpluses that were running at the time.</p> <p>9 Treasury was going to stop issuing. By 2004,</p> <p>10 2005 all the short maturities were basically</p> <p>11 scheduled to run off, and they would just be</p> <p>12 left with surpluses of cash and longer maturity</p> <p>13 treasuries that hadn't matured yet, and they</p> <p>14 would be spending a lot of that cash to buy back</p> <p>15 those securities would be the only ones left</p> <p>16 outstanding.</p> <p>17 It's kind of a good fundamental for</p> <p>18 that end of the market.</p> <p>19 I'm sorry. It's a bit of a technical</p> <p>20 discussion, but my conclusion was for many</p> <p>21 different reasons that the 30-year bond</p> <p>22 represented really good value.</p> <p>23 Q. And did you have that view prior to</p> <p>24 September 11, 2001?</p> <p>25 A. I don't recall.</p>                            | <p>1 long bond?</p> <p>2 A. The market in general?</p> <p>3 Q. Yes.</p> <p>4 A. Yes. The National Purchasing</p> <p>5 Manager's Index, which was scheduled for</p> <p>6 Thursday morning. Best I recall, the Purchasing</p> <p>7 Manager's Index is a ten o'clock release.</p> <p>8 Q. Anything else?</p> <p>9 A. No. Those were two good leading sort</p> <p>10 of sign posts kind of what -- they're very</p> <p>11 current -- it's the first current view you get</p> <p>12 of economic activity for the prior month.</p> <p>13 You actually get the purchasing</p> <p>14 manager I think on the last day of the month,</p> <p>15 and the employment report's always the first</p> <p>16 Friday of the following month, so it's real</p> <p>17 fresh.</p> <p>18 Q. Now, after you receive a call from the</p> <p>19 broker regarding the rumors on the Chicago Board</p> <p>20 of Trade and before you receive Mr. Davis's</p> <p>21 voicemail, did you make any trades in the</p> <p>22 30-year bond?</p> <p>23 A. No.</p> <p>24 Q. Did you tell any of your colleagues</p> <p>25 about the rumor on the Chicago Board of Trade</p>   |
| Page 211  | Page 213  |
| <p>1 A lot of the story that I'm telling</p> <p>2 you right now really grew out of the events</p> <p>3 after September 11th, the way it sort of</p> <p>4 impacted the economy, and potentially it</p> <p>5 entirely changed expectations of what growth was</p> <p>6 going to be, what inflation was going to be. It</p> <p>7 had a big impact on the markets.</p> <p>8 Q. Did you recall reading any documents</p> <p>9 prior to October 31, 2001 that included the same</p> <p>10 strategy that you just discussed that advocated</p> <p>11 for that strategy?</p> <p>12 A. As I sit here now, documents -- I</p> <p>13 don't recall documents produced by brokerage</p> <p>14 houses or other analysts, but I just don't</p> <p>15 recall.</p> <p>16 Q. Do you recall any documents produced</p> <p>17 by brokerage houses that had a contrary view to</p> <p>18 the strategy you just discussed?</p> <p>19 A. I really don't.</p> <p>20 Q. You mentioned that there was going to</p> <p>21 be an employment report on November 1st; is that</p> <p>22 correct?</p> <p>23 A. Yes.</p> <p>24 Q. Were there any other announcements</p> <p>25 that you were looking to that might affect the</p> | <p>1 before you received Mr. Davis's voicemail?</p> <p>2 A. No.</p> <p>3 Q. Why not?</p> <p>4 A. It didn't rise to the level of</p> <p>5 something I would get up and go talk to them.</p> <p>6 I likely assumed that they were</p> <p>7 getting exactly the same information I was.</p> <p>8 Q. When you say "it didn't rise to the</p> <p>9 level," what do you mean?</p> <p>10 A. I mean that as I said. I think my</p> <p>11 assumption would be that they were getting</p> <p>12 exactly the same information from the brokers</p> <p>13 that I was. Like myself, if they're on the</p> <p>14 trading desk, they're getting these phone calls,</p> <p>15 and they're probably getting the same</p> <p>16 information. The broker hangs up with me, he</p> <p>17 might call Mr. Kurinsky.</p> <p>18 Q. Now, you said that -- you were talking</p> <p>19 before the break about a comment you made, "I</p> <p>20 wonder what the ethics are on all this." And</p> <p>21 you recall making that comment?</p> <p>22 A. Yes.</p> <p>23 Q. And you were saying that it was no</p> <p>24 doubt in your mind that the information was</p> <p>25 public, and one of the reasons is because it had</p> |

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|--|--|
| <p>1 spilled into the Chicago Board of Trade.<br/> 2 Now, my understanding is that the<br/> 3 broker told you that the Chicago Board of Trade<br/> 4 information was a rumor; is that right?<br/> 5 A. Yes.<br/> 6 Q. So when you say "it spilled into the<br/> 7 Chicago Board of Trade," you mean there was a<br/> 8 rumor on the Chicago Board of Trade?<br/> 9 A. I mean people on the Board of Trade<br/> 10 seemed to have this information. Not to me. I<br/> 11 assumed they'd gotten it.<br/> 12 Q. Did Mr. Davis characterize information<br/> 13 in his voicemail as a rumor?<br/> 14 A. No, not to my recollection.<br/> 15 Q. If the information -- I understand you<br/> 16 understood that the information was public.<br/> 17 Did you have any question in your mind<br/> 18 as to why the news wires had not reported this<br/> 19 information?<br/> 20 MR. SHOPE: Objection.<br/> 21 A. I don't know that the news wires<br/> 22 hadn't.<br/> 23 Q. Had you seen the information reported<br/> 24 on the news wires as of the time you placed the<br/> 25 trade for 25 million long bonds on October 31st?</p> | <p>1 have the question reread, please?<br/> 2 A. You have to repeat that.<br/> 3 Q. Okay.<br/> 4 A. I'm not sure what you're asking.<br/> 5 Q. Let me rephrase.<br/> 6 You mentioned that this -- you believe<br/> 7 this information was public but that there was<br/> 8 a -- a press release was embargoed until 10 a.m.<br/> 9 Do you know of any other announcements<br/> 10 the Treasury made prior to October 31st where<br/> 11 the same kind of thing occurred?<br/> 12 MR. THEODOROU: Objection.<br/> 13 A. I'm sorry. I don't understand your<br/> 14 question.<br/> 15 Q. Okay. You testified that Mr. Davis<br/> 16 said that there was a press release that was<br/> 17 embargoed until 10 a.m., and your understanding<br/> 18 was that the press release would contain<br/> 19 information the Treasury was cancelling the<br/> 20 30-year bond; is that correct?<br/> 21 MR. THEODOROU: Objection.<br/> 22 A. That there was a press release embargo<br/> 23 until 10 that implicitly would contain that<br/> 24 information, yes.<br/> 25 Q. Okay. And I'm wondering if prior to</p> |
| Page 215   | Page 217   |
| <p>1 A. No.<br/> 2 Q. You mentioned that Mr. Davis said that<br/> 3 there was a press release that was embargoed<br/> 4 until 10 a.m.<br/> 5 Did you believe that the news wires<br/> 6 were allowed to report the cancellation of the<br/> 7 30-year bond prior to 10 a.m. on October 31st?<br/> 8 MR. SHOPE: Objection.<br/> 9 MR. THEODOROU: Objection.<br/> 10 A. I don't know what they were allowed to<br/> 11 do. Point of fact, I think they did.<br/> 12 Q. You believe who did what?<br/> 13 A. Point of fact, I think the wire<br/> 14 services did report it before ten o'clock.<br/> 15 Q. When did you first learn that the wire<br/> 16 services had reported the information?<br/> 17 A. I don't recall.<br/> 18 Q. Did you learn before you placed the<br/> 19 trade for 25 million long bonds?<br/> 20 A. No.<br/> 21 Q. Are you aware of any other<br/> 22 announcements the Treasury made prior to<br/> 23 October 31st that were made public prior to a<br/> 24 press release embargo time?<br/> 25 MR. SHOPE: Objection. Can you</p>   | <p>1 October 31st, if you were aware of any other<br/> 2 announcements the Treasury made that had been<br/> 3 made public but had a press release that was<br/> 4 embargoed until a certain time?<br/> 5 A. No.<br/> 6 Q. What, if anything, did anyone say<br/> 7 after you made the statement I wonder what the<br/> 8 ethics are?<br/> 9 MR. SHOPE: I'm sorry, can I just<br/> 10 have that question reread?<br/> 11 (Record read)<br/> 12 A. I don't recall anyone making any<br/> 13 comment.<br/> 14 Q. Do you recall anyone asking any<br/> 15 questions?<br/> 16 A. Immediately after that?<br/> 17 Q. Yes.<br/> 18 A. I don't remember anybody saying<br/> 19 anything, so no.<br/> 20 Q. Just one more question.<br/> 21 You mentioned that you did some -- you<br/> 22 made some sales in intermediate securities that<br/> 23 morning. And I was wondering if you were aware<br/> 24 of any documents that reflect those sales?<br/> 25 A. Yes.</p>  |

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| Page 218  | Page 220   |
|---|--|
| <p>1 Q. What documents reflect those sales?</p> <p>2 A. I believe we have in this production a</p> <p>3 log of transactions that we did on the high</p> <p>4 grade trading desk that morning.</p> <p>5 Q. And how many sales did you do prior to</p> <p>6 this purchase of 25 million long bonds? How</p> <p>7 many sales did you do of intermediate securities</p> <p>8 the morning of October 31?</p> <p>9 MR. SHOPE: Objection.</p> <p>10 MR. THEODOROU: Objection.</p> <p>11 A. Before --</p> <p>12 Q. Before you purchased them.</p> <p>13 A. My recollection is I'd done three in</p> <p>14 the three different portfolios that we</p> <p>15 mentioned, the best I can recall.</p> <p>16 Q. And do you know if all of those</p> <p>17 transactions are reflected on the log that you</p> <p>18 referenced?</p> <p>19 A. I believe they are.</p> <p>20 MS. WILLIAMS: I think this is a</p> <p>21 good time to break.</p> <p>22 MR. THEODOROU: Okay.</p> <p>23 THE VIDEOGRAPHER: One moment,</p> <p>24 please.</p> <p>25 This marks the end of videotape number</p> | <p>1 CERTIFICATE</p> <p>2</p> <p>3 I, STEVEN E. NOTHERN, do hereby certify</p> <p>4 that I have read the foregoing transcript of my</p> <p>5 testimony, and further certify that it is a true</p> <p>6 and accurate record of my testimony</p> <p>7</p> <p>8</p> <p>9</p> <p>10 <u>STEVEN E. NOTHERN</u></p> <p>11</p> <p>12</p> <p>13</p> <p>14</p> <p>15</p> <p>16</p> <p>17</p> <p>18</p> <p>19</p> <p>20</p> <p>21</p> <p>22</p> <p>23</p> <p>24</p> <p>25</p>   |
| Page 219  | Page 221   |
| <p>1 three in the deposition of Steven Nothern.</p> <p>2 Going off the record, four o'clock</p> <p>3 p.m.</p> <p>4 (Whereupon the deposition was</p> <p>5 suspended at 4:00 p.m.)</p> <p>6</p> <p>7</p> <p>8</p> <p>9</p> <p>10</p> <p>11</p> <p>12</p> <p>13</p> <p>14</p> <p>15</p> <p>16</p> <p>17</p> <p>18</p> <p>19</p> <p>20</p> <p>21</p> <p>22</p> <p>23</p> <p>24</p> <p>25</p>   | <p>1 COMMONWEALTH OF MASSACHUSETTS)</p> <p>2 SUFFOLK, SS. )</p> <p>3</p> <p>4 I, Daria L. Romano, RPR, CRR and Notary</p> <p>5 Public in and for the Commonwealth of</p> <p>6 Massachusetts, do hereby certify that there came</p> <p>7 before me on the 30th day of January, 2007, at</p> <p>8 9:19 a.m., the person hereinbefore named was</p> <p>9 duly sworn by me and that such deposition is a</p> <p>10 true record of the testimony given by the</p> <p>11 witness.</p> <p>12 I further certify that I am neither related</p> <p>13 to nor employed by any of the parties or counsel</p> <p>14 to this action, nor am I financially interested</p> <p>15 in the outcome of this action.</p> <p>16 In witness whereof, I have hereunto set my</p> <p>17 hand and seal this 7th day of February, 2007.</p> <p>18</p> <p>19</p> <p>20</p> <p>21 <u>Notary Public</u></p> <p>22 <u>My Commission Expires</u></p> <p>23 <u>March 15, 2013</u></p> <p>24</p> <p>25</p> |

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4

5 UNITED STATES DISTRICT COURT  
6 DISTRICT OF MASSACHUSETTS  
7 (Boston Division)

8 Civil Action No. 05-CV-10983 (NMG)

9 - - - - -

10 UNITED STATES SECURITIES AND EXCHANGE  
11 COMMISSION,

12 Plaintiff,

13 v.

14 STEVEN E. NOTHERN,

15 Defendant.  
16 - - - - -

17 Continued Deposition of Steven E. Nothern

18 January 31, 2007

19 9:13 a.m. - 11:53 a.m.

20 Securities and Exchange Commission

21 33 Arch Street

22 Boston, Massachusetts

23

24 Reporter: Daria L. Romano, RPR/CRR

25

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|--|--|
| <p>1 APPEARANCES:</p> <p>2 UNITED STATES SECURITIES AND</p> <p>3 EXCHANGE COMMISSION</p> <p>4 (by Erica Y. Williams,</p> <p>5 Assistant Chief Litigation Counsel;</p> <p>6 John J. Rossetti, Jr., Senior Counsel,</p> <p>7 Division of Enforcement)</p> <p>8 100 F Street, N.E.</p> <p>9 Washington, D.C. 20549-4010</p> <p>10 (202) 551-4450</p> <p>11 williamse@sec.gov</p> <p>12 rossettij@sec.gov</p> <p>13 for the Plaintiff.</p> <p>14</p> <p>15 FOLEY HOAG, LLP</p> <p>16 (by Nicholas Theodorou, Esq. and</p> <p>17 John Shope, Esq.)</p> <p>18 155 Seaport Boulevard</p> <p>19 Boston, Massachusetts 02210</p> <p>20 (617) 832-3061</p> <p>21 jtheodorou@foleyhoag.com</p> <p>22 jshope@foleyhoag.com</p> <p>23 for the Defendant.</p> <p>24</p> <p>25 ALSO PRESENT: Ian McWilliams, Videographer</p> | <p>1 EXHIBITS</p> <p>2 No. Page</p> <p>3 22 Davis Capital Investment Ideas invoice 320</p> <p>4 23 Treasury News From The Office Of</p> <p>5 Public Affairs 322</p> <p>6</p> <p>7</p> <p>8 *Original exhibits returned to Ms. Williams</p> <p>9</p> <p>10</p> <p>11</p> <p>12</p> <p>13</p> <p>14</p> <p>15</p> <p>16</p> <p>17</p> <p>18</p> <p>19</p> <p>20</p> <p>21</p> <p>22</p> <p>23</p> <p>24</p> <p>25</p>  |
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| <p>1 INDEX</p> <p>2 Deposition of: Page</p> <p>3 STEVEN E. NOTHERN</p> <p>4 By Ms. Williams 226</p> <p>5</p> <p>6</p> <p>7 EXHIBITS</p> <p>8 No. Page</p> <p>9 11 Document 282</p> <p>10 12 Minutes of the meeting of the</p> <p>11 Treasury Borrowing Advisory Committee</p> <p>12 of the Bond Market Association,</p> <p>13 January 30, 2001 292</p> <p>14 13 Press release from the Office of Public</p> <p>15 Affairs, Treasury News 294</p> <p>16 14 Telephone records 294</p> <p>17 15 E mail 297</p> <p>18 16 Treasury News, Treasury Department To</p> <p>19 Hold Quarterly Refunding News</p> <p>20 Conference 299</p> <p>21 17 Fax cover sheet dated October 30, 2001 299</p> <p>22 18 Document 300</p> <p>23 19 Document 302</p> <p>24 20 Agenda 311</p> <p>25 21 E mail 315</p>                    | <p>1 PROCEEDINGS</p> <p>2</p> <p>3 THE VIDEOGRAPHER: Here begins</p> <p>4 videotape number four in the deposition of</p> <p>5 Steven Northern in the matter of the United</p> <p>6 States Securities and Exchange Commission versus</p> <p>7 Steven Northern.</p> <p>8 Today's date is January 31st, year</p> <p>9 2007.</p> <p>10 All parties present at the January 30,</p> <p>11 2007 proceedings are here.</p> <p>12 Please begin.</p> <p>13</p> <p>14 STEVEN E. NOTHERN, PREVIOUSLY DULY SWORN</p> <p>15</p> <p>16 CONTINUED DIRECT EXAMINATION</p> <p>17 BY MS. WILLIAMS:</p> <p>18 Q. Good morning, Mr. Northern.</p> <p>19 Yesterday when we left off we were</p> <p>20 discussing the strategy that you were using to</p> <p>21 shift away from intermediate and short-term</p> <p>22 bonds towards longer term bonds.</p> <p>23 And I wanted to know if you had</p> <p>24 discussed that strategy with any of your</p> <p>25 colleagues prior to October 31, 2001?</p> |

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|--|--|
| <p>1 A. Yes.</p> <p>2 Q. Who?</p> <p>3 A. The general -- my investment</p> <p>4 colleagues, the general investment group.</p> <p>5 Q. Were any of those colleagues people</p> <p>6 who sat on the high grade trading desk with you?</p> <p>7 A. Yes.</p> <p>8 Q. Could you tell me their names?</p> <p>9 A. I can't specifically tell you who I</p> <p>10 met when we reviewed and discussed those views,</p> <p>11 but the members of the High Grade Group were</p> <p>12 myself, Rick Smith, David Kennedy, Jeffrey</p> <p>13 Kurinsky, Jim Calmus and Peter Vaream.</p> <p>14 Q. When you say you can't say who you met</p> <p>15 with when you discussed those views, was there a</p> <p>16 meeting where you presented this strategy?</p> <p>17 A. Yes.</p> <p>18 Q. When was that?</p> <p>19 A. I don't recall. We had periodic</p> <p>20 meetings where we discussed our investment views</p> <p>21 and documented on -- we had a form outlining our</p> <p>22 individual views.</p> <p>23 So we brought those forms to the</p> <p>24 meeting, and someone was tasked to consolidate a</p> <p>25 summary so the departments could see a</p> | <p>1 MR. SHOPE: I was hoping that I had</p> <p>2 it with me here today, and I may still have it</p> <p>3 in my briefcase, but it does exist.</p> <p>4 BY MS. WILLIAMS:</p> <p>5 Q. Okay. Is there a title of the</p> <p>6 document?</p> <p>7 A. I can't recall the title. It was the</p> <p>8 High Grade Group Investment Outlook, something</p> <p>9 to that effect.</p> <p>10 Q. You said you had periodic meetings.</p> <p>11 How often were these meetings?</p> <p>12 A. I don't recall. They were possibly</p> <p>13 weekly, possibly monthly.</p> <p>14 MR. SHOPE: Ms. Williams?</p> <p>15 MS. WILLIAMS: Yes.</p> <p>16 MR. SHOPE: I don't mean to</p> <p>17 interrupt matters, but I can refer you to the</p> <p>18 Fixed Income Outlook Committee Report. There's</p> <p>19 actually a collection of them. And the set that</p> <p>20 I have begins at Bates NOTHERN0110 and continues</p> <p>21 to 0395.</p> <p>22 MS. WILLIAMS: Great.</p> <p>23 MR. SHOPE: And there are</p> <p>24 discussions at Bates 114 and 115 of the matter</p> <p>25 about which you are asking dated October 10 and</p>   |
| Page 228   | Page 230   |
| <p>1 summarized version of the collective views of</p> <p>2 our group.</p> <p>3 Q. Was this summary written?</p> <p>4 A. Yes.</p> <p>5 Q. Did you receive a copy of the summary?</p> <p>6 A. We all received a copy.</p> <p>7 This was a periodic meeting. We</p> <p>8 periodically put out a summary of the views. It</p> <p>9 was typed, Excel, one page. And we circulated</p> <p>10 it to other departments who might have an</p> <p>11 interest.</p> <p>12 Q. Do you still have a copy of this</p> <p>13 summary that includes the strategy we talked</p> <p>14 about?</p> <p>15 A. We do in our documents. I mean, I do.</p> <p>16 Q. You do?</p> <p>17 A. Yes.</p> <p>18 Q. And did you produce it in this</p> <p>19 litigation?</p> <p>20 MR. SHOPE: Ms. Williams, I would</p> <p>21 represent that it was produced, and I actually</p> <p>22 reviewed the documents in question not too long</p> <p>23 ago.</p> <p>24 MS. WILLIAMS: Okay. I'm just</p> <p>25 trying to figure out which document it is.</p>   | <p>1 October 24, 2001.</p> <p>2 MS. WILLIAMS: Thank you.</p> <p>3 BY MS. WILLIAMS:</p> <p>4 Q. Was this Fixed Income Outlook document</p> <p>5 distributed to all of the members of the high</p> <p>6 grade trading desk?</p> <p>7 A. To the best of my knowledge, yes.</p> <p>8 The process was we each came to the</p> <p>9 meeting with a completed form, which was the</p> <p>10 same form that we used for the summary, where we</p> <p>11 filled in all the appropriate boxes surveying</p> <p>12 our views on maybe 20, 30 different data points,</p> <p>13 if you will, or issues just to get the portfolio</p> <p>14 managers to commit to what their view was.</p> <p>15 I believe it was based on a</p> <p>16 three-month horizon, where do you think,</p> <p>17 example, you should favor short-term maturities,</p> <p>18 intermediate maturities, long-term maturities,</p> <p>19 corporates, do you favor mortgages over agencies</p> <p>20 over treasuries, to have them express those</p> <p>21 types of views.</p> <p>22 So people came in individually</p> <p>23 prepared. We would meet, discuss the individual</p> <p>24 views and in a sense debate. And someone would</p> <p>25 tasked to summarizing sort of collectively what</p> |

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|---|--|
| <p>1 our view was.</p> <p>2 We would typically defer to the</p> <p>3 person, for example, that covered corporates, we</p> <p>4 would probably weight their opinions a little</p> <p>5 more heavily than my opinion on corporates, for</p> <p>6 example.</p> <p>7 So it would get summarized and</p> <p>8 distributed. I'm sure we individually got</p> <p>9 copies, but it was distributed more widely</p> <p>10 because really the intention was to have us have</p> <p>11 a forum for discussing it and, B, to distribute</p> <p>12 it other departments kind of one consolidated,</p> <p>13 you know, consistent view from our group of what</p> <p>14 our thoughts were.</p> <p>15 Q. And just to clarify, did you prepare</p> <p>16 part of the summary for the government</p> <p>17 securities?</p> <p>18 A. The process was we each went in</p> <p>19 individually. So I went in with mine, which</p> <p>20 would say Steve Northern, and at some point there</p> <p>21 was produced another, which would be called the</p> <p>22 summary, and that would be the summary of -- I</p> <p>23 mean, that was one forum for this type of</p> <p>24 discussion.</p> <p>25 The other forum for discussing my</p>   | <p>1 A. Which strategy?</p> <p>2 Q. To shift away from intermediate and</p> <p>3 short-term bonds towards longer term bonds?</p> <p>4 A. I don't know.</p> <p>5 Q. Now, you mentioned that around the</p> <p>6 August refunding you had heard rumors about</p> <p>7 possible cancellation of the 30-year bond, and I</p> <p>8 believe -- and I'm wondering how, if at all, the</p> <p>9 possible cancellation of the bond at some point</p> <p>10 factored into your strategy?</p> <p>11 MR. SHOPE: Objection.</p> <p>12 A. It was not just the August period.</p> <p>13 We'd been talking about this in the market for</p> <p>14 well over a year, probably two years.</p> <p>15 Q. Okay.</p> <p>16 A. The cancellation of the long bond was</p> <p>17 an outcome of a much broader circumstance.</p> <p>18 The government at that point was</p> <p>19 running substantial surpluses. We were actually</p> <p>20 running surpluses, 200 billion a year, I</p> <p>21 believe, so at that time it was very substantial</p> <p>22 and projected to grow. So that you can see --</p> <p>23 it's almost like demographics. You can see, you</p> <p>24 know, years ahead of time what the trends are.</p> <p>25 So we'd been focusing on this issue of</p>  |
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| <p>1 views was, as we discussed, we had a</p> <p>2 departmental meeting at nine in the morning</p> <p>3 pretty much as regularly as we could. There</p> <p>4 were exceptions. That would be a forum for me</p> <p>5 to discuss that type of a view, and undoubtedly</p> <p>6 I did.</p> <p>7 Q. Now, you mentioned that the views that</p> <p>8 were discussed, and some of them were included</p> <p>9 in the Fixed Income Outlook document, were</p> <p>10 three-month, forward-looking sort of views. Was</p> <p>11 your strategy a three-month, forward-looking</p> <p>12 strategy?</p> <p>13 A. I would have to review that document</p> <p>14 to ascertain that.</p> <p>15 My general thinking as a portfolio</p> <p>16 manager, I'm looking out -- my investment</p> <p>17 horizon is typically nine months. But as a</p> <p>18 group, for practical purposes, we need to agree</p> <p>19 on an investment horizon, and whether it's three</p> <p>20 months, six months or nine months is somewhat</p> <p>21 immaterial. You just agree. And I think it was</p> <p>22 three months for that document, but I don't</p> <p>23 recall specifically.</p> <p>24 Q. Do you know if any other portfolio</p> <p>25 managers adopted the same strategy?</p> | <p>1 basically the publicly-available and</p> <p>2 publicly-traded debt. The US Treasury was going</p> <p>3 to disappear from the marketplace. And the</p> <p>4 shorter maturity debt would disappear sooner</p> <p>5 because it rolls off sooner.</p> <p>6 So that by 2004, 2005, basically you</p> <p>7 wouldn't have a publicly-traded market in</p> <p>8 two-years, three-years, five-year Treasury</p> <p>9 securities anymore. There just wouldn't be a</p> <p>10 need to borrow, and there would continue to be</p> <p>11 surpluses, at which point you'd have to spend</p> <p>12 that money to go buy the outstanding long bonds.</p> <p>13 So the question is does it make sense</p> <p>14 to be issuing long bonds if you know or if you</p> <p>15 project by 2006, 2007, 2008 you're going to be</p> <p>16 somewhat inefficiently forced to go out in the</p> <p>17 marketplace and pay whatever premium they're</p> <p>18 trading at to buy them back. The government on</p> <p>19 its books would book that as a loss, as a cost.</p> <p>20 And the question was -- it's pretty</p> <p>21 clear, we'd been talking about it for a period</p> <p>22 of time, the question is or was does it make</p> <p>23 sense to continue issuing long maturity</p> <p>24 treasuries.</p> <p>25 Q. And I'm --</p> |

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| <p>1 A. This was on the table.<br/> 2 Q. I understand.<br/> 3 And I'm wondering how, if at all, the<br/> 4 fact that you believe the long bond would be<br/> 5 eliminated at some point, how, if at all, that<br/> 6 factored into your strategy to shift away from<br/> 7 short term to long term?<br/> 8 MR. THEODOROU: Objection.<br/> 9 A. I did believe at the time that the<br/> 10 30-year treasury represented value. Treasuries,<br/> 11 both tips and nominal bonds or regular bonds, it<br/> 12 was my opinion at the time represented value.<br/> 13 One of the reasons would certainly be<br/> 14 that -- that there were probably not going to be<br/> 15 enough 30-year treasury bonds to go around,<br/> 16 either because they stopped issuing, or they<br/> 17 slowed down issuing, or they were just put away<br/> 18 and not available in the marketplace.<br/> 19 30-year treasuries provide a useful<br/> 20 function for insurance company portfolios, for<br/> 21 mutual fund portfolios, for pension funds that<br/> 22 have long-term liabilities to match, and we were<br/> 23 facing the very real prospect of there just<br/> 24 plain not being enough to go around, at which<br/> 25 case they represent value.</p> | <p>1 A. No.<br/> 2 Q. Did you expect the bond cancellation<br/> 3 to be announced at a refunding?<br/> 4 A. No.<br/> 5 Q. Why not?<br/> 6 A. I had no expectations of how they<br/> 7 would announce it or decide it.<br/> 8 Q. But you had heard rumors surrounding<br/> 9 the August refunding, the possible cancellation<br/> 10 being announced at that refunding?<br/> 11 A. I do recall that the August period<br/> 12 there had been a lot of talk about it.<br/> 13 Q. I asked you yesterday some questions<br/> 14 about what factored into your decision to<br/> 15 purchase 30-year bonds on October 31st, and you<br/> 16 mentioned the strategy, and I wanted to follow<br/> 17 up on that.<br/> 18 Was there anything else besides your<br/> 19 strategy to shift from intermediate bonds to<br/> 20 long-term bonds that factored into your decision<br/> 21 to purchase 30-year bonds on October 31st?<br/> 22 A. Yes.<br/> 23 Q. What else?<br/> 24 A. Generally I thought they represented<br/> 25 value. We discussed some of the reasons. There</p>  |
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| <p>1 There are other reasons at the time,<br/> 2 but that was certainly one of them.<br/> 3 Q. Prior to October 31, 2001, did you<br/> 4 have any idea as to when you thought Treasury<br/> 5 might cancel the 30-year bond?<br/> 6 A. We'd been looking at that issue for a<br/> 7 long time. I concluded that the prior<br/> 8 administration was probably inclined to suspend<br/> 9 issuance or stop issuing 30-year treasuries.<br/> 10 I had sort of concluded at the time<br/> 11 that they punted that issue and sort of left it<br/> 12 to the next administration, which is the current<br/> 13 administration that took office in early 2001.<br/> 14 I think they didn't -- it was<br/> 15 appropriate. They didn't want to tie the hands<br/> 16 of the next Treasury secretary, so they let the<br/> 17 next administration -- that was sort of my<br/> 18 judgment. Otherwise, I think they were inclined<br/> 19 to do it in 2000.<br/> 20 Q. So you thought it would happen with<br/> 21 the current administration, which you said took<br/> 22 office in early 2001.<br/> 23 Did you have any idea of how long<br/> 24 after the current administration took office as<br/> 25 to when it might be cancelled?</p>               | <p>1 are many other reasons.<br/> 2 I think we touched upon yesterday<br/> 3 probably the most important reason is that we<br/> 4 were in a period of economic slow down. The<br/> 5 shock -- you have to remember, this is just<br/> 6 after September 11. We had taken a kick in the<br/> 7 teeth, in a sense. And, you know, Americans<br/> 8 after a few days, we stiffened, but it was a<br/> 9 shock to the system.<br/> 10 And at this point in time, October 31,<br/> 11 there was a lot of uncertainty surrounding what<br/> 12 the impact -- and we were at war at that period<br/> 13 of time. So there was a lot of uncertainty in<br/> 14 terms of moving forward what the economic<br/> 15 environment would be.<br/> 16 When business is faced with that and<br/> 17 households are faced with that kind of<br/> 18 uncertainty, they often become more<br/> 19 conservative. So it tends to lead to more<br/> 20 conservative behavior, more modest economic<br/> 21 growth, which is the underpinnings for an<br/> 22 environment which is less inflationary.<br/> 23 We were already in a disinflationary<br/> 24 environment at that point in time. My judgment<br/> 25 was that the disinflationary trends would, if</p> |

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| <p>1 anything, come downward, so inflation would<br/>2 trend lower.</p> <p>3 So inflation expectations for people<br/>4 looking forward, oh, growth is going to be<br/>5 slower, expectation for inflation would be<br/>6 inflation is going to go down too. That was my<br/>7 forecast nine months, you know, three, six,<br/>8 quarters down the road through 2002, 2003.</p> <p>9 Point of fact, inflation did go<br/>10 perilously close to zero in that period of time,<br/>11 and that was the environment we were in.</p> <p>12 30-year treasuries, the longer the<br/>13 maturity of the treasury, the more sensitive it<br/>14 is to this inflation expectations idea, you<br/>15 know, what people think inflation is going to be<br/>16 because part of how we price what a 30-year bond<br/>17 is worth is do we think the money we get paid 30<br/>18 years from is now going to be worth anything.<br/>19 So there's a view we have to have on how<br/>20 inflationary is the world going to be over the<br/>21 course of the next 30 years. So inflation<br/>22 expectations play the largest role in the<br/>23 longest maturity bond.</p> <p>24 So my view is that inflation<br/>25 expectations may go down sharply because of the</p> | <p>1 25 million long bonds?</p> <p>2 A. Between the call from the broker that<br/>3 this information was circulating on the Board of<br/>4 Trade and the message that Peter Davis left when<br/>5 I listened to his voicemail message, that the<br/>6 market had actually started to run a little bit,<br/>7 and it moved up another eight, 10, I can't<br/>8 remember exactly what, but it actually was<br/>9 starting to run, so it was moving up at a<br/>10 slightly accelerated pace. So the fact that --<br/>11 that fact alone also is a factor.</p> <p>12 Q. Now, you said that the broker who<br/>13 called you about the rumor on Chicago Board of<br/>14 Trade used the word rumor.</p> <p>15 What, if any, action did you take to<br/>16 verify that there actually was a rumor on the<br/>17 Chicago Board of Trade on October 31st?</p> <p>18 MR. THEODOROU: Objection.</p> <p>19 MR. SHOPE: Objection.</p> <p>20 A. I don't understand your question.</p> <p>21 Q. Did the broker who called you work at<br/>22 the Chicago Board of Trade?</p> <p>23 A. No, not that I can recall.</p> <p>24 Q. Do you know how he obtained the<br/>25 information that there was a rumor on the</p> |
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| <p>1 environment that we found ourselves in. The<br/>2 best way to express that view in the portfolios<br/>3 is to own more 30-year treasury bonds.</p> <p>4 Q. How, if at all, did the call you<br/>5 received from the broker telling you about<br/>6 rumors on the Chicago Board of Trade on<br/>7 October 31st factor into your decision to buy 25<br/>8 million long bonds that morning?</p> <p>9 MR. SHOPE: Objection.</p> <p>10 A. At that point the market was moving<br/>11 higher. I believe the market had been drifting<br/>12 higher for a week. At that particular morning<br/>13 it was it drifting up, I believe, eight to 10<br/>14 ticks. He called and shared with me what he<br/>15 thought the reason was for that.</p> <p>16 So to the extent that the market was<br/>17 moving up and started to arrive at an<br/>18 understanding why that did have -- that did play<br/>19 a role in purchasing the 30-year treasury bonds.</p> <p>20 Q. Did Mr. Davis's voicemail that you<br/>21 received factor into your decision to purchase<br/>22 25 million long bonds that morning?</p> <p>23 A. Yes.</p> <p>24 Q. Did anything else that we haven't<br/>25 mentioned factor into your decision to purchase</p>                        | <p>1 Chicago Board of Trade on October 31st?</p> <p>2 MR. THEODOROU: Objection.</p> <p>3 A. Is your question do I know?</p> <p>4 Q. Yes.</p> <p>5 A. No, I don't know.</p> <p>6 Q. Did he tell you where he had gotten<br/>7 this information?</p> <p>8 MR. THEODOROU: Objection.</p> <p>9 A. The source of the information was from<br/>10 the Chicago Board of Trade.</p> <p>11 Q. Do you know who his source was at the<br/>12 Chicago Board of Trade that informed him that<br/>13 there was a rumor?</p> <p>14 A. No.</p> <p>15 Q. Do you know anyone on the Chicago<br/>16 Board of Trade? Did you on October 31st?</p> <p>17 A. Did I know anybody that worked there?</p> <p>18 Q. Yes.</p> <p>19 A. No.</p> <p>20 Q. And did you contact anyone at the<br/>21 Chicago Board of Trade on the morning of<br/>22 October 31st before you traded in the 30-year<br/>23 bond?</p> <p>24 A. No.</p> <p>25 Q. When you came to work on October 31st,</p>  |

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| <p>1 did you have enough cash in the portfolios you<br/>2 managed to buy 30-year bonds?</p> <p>3 A. I don't -- I don't know what my cash<br/>4 was -- as we sit here today, I don't know what<br/>5 my cash positions were.</p> <p>6 Q. Okay.</p> <p>7 A. I can tell you, if this is helpful,<br/>8 that there were different types of funds. There<br/>9 were close-end funds and open-end funds and a<br/>10 securities fund which was a Flagship Fund, that<br/>11 fund I do believe had cash because it was<br/>12 experiencing growth.</p> <p>13 As to the level of cash and that of<br/>14 the other funds, I don't have records to that<br/>15 right now.</p> <p>16 Q. Yesterday you testified that you<br/>17 believe the information that you received from<br/>18 Mr. Davis was public at the time that you placed<br/>19 your order to trade; is that correct?</p> <p>20 MR. THEODOROU: Objection.</p> <p>21 A. I believe I testified that the fact<br/>22 that the Treasury was going to be cancelling the<br/>23 bond, it had every appearance of being public<br/>24 information to me at the time.</p> <p>25 Q. Okay. And I just -- I don't want to</p>  | <p>1 why the market was moving. When Mr. Davis left<br/>2 his message, it corroborated both those things<br/>3 once again.</p> <p>4 It led me to believe that the people<br/>5 on the Board of Trade indeed had the same<br/>6 information that Mr. Davis did.</p> <p>7 Q. Now, the information that you had<br/>8 received from the broker about the Chicago Board<br/>9 of Trade had been characterized as a rumor,<br/>10 though; is that correct?</p> <p>11 MR. THEODOROU: Objection.</p> <p>12 A. Yes.</p> <p>13 Q. After receiving Mr. Davis's voicemail,<br/>14 did you give any thought to the possibility that<br/>15 the information he provided in the voicemail<br/>16 might not be true?</p> <p>17 MR. THEODOROU: Objection.</p> <p>18 A. Did I ever?</p> <p>19 Q. Let me rephrase.</p> <p>20 Did you have any -- after you received<br/>21 the voicemail, did you think that there was a<br/>22 possibility that Treasury might not announce the<br/>23 canceling of the long bond at 10 a.m.?</p> <p>24 MR. THEODOROU: Objection.</p> <p>25 A. That's certainly a possibility.</p> |
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| <p>1 misstate what your testimony was yesterday, so<br/>2 I'm going to ask this one question again.</p> <p>3 Why did you believe that the<br/>4 information; i.e., the Treasury was going to<br/>5 cancel the bond, why did you believe that was<br/>6 public information at the time you traded?</p> <p>7 MR. THEODOROU: Objection.</p> <p>8 A. To me it seemed self-evident that this<br/>9 explained what the market was reacting to. It<br/>10 was reacting to information.</p> <p>11 I had heard that people on the Board<br/>12 of Trade, you know, seemed to have this<br/>13 information. I heard Mr. Davis had it. He's a<br/>14 member of the public. I'm a member of the<br/>15 public. This information had spilled out to the<br/>16 public. And the market was reacting to it.</p> <p>17 Q. Besides the fact that Mr. Davis had<br/>18 the information and you had the information and<br/>19 the market movement, was there anything else<br/>20 that led you to believe that the information was<br/>21 public?</p> <p>22 A. The broker had called me earlier and<br/>23 said that people on the Board of Trade thought<br/>24 this was going to happen.</p> <p>25 It seemed at the time to corroborate</p> | <p>1 Q. Would you have been surprised that day<br/>2 if Treasury had not announced the cancellation<br/>3 of the long bond at 10?</p> <p>4 MR. THEODOROU: Objection.</p> <p>5 A. Just -- could you rephrase that, if<br/>6 you don't mind?</p> <p>7 Q. Sure.</p> <p>8 After you received Mr. Davis's<br/>9 voicemail, you said there was a possibility that<br/>10 Treasury might not have announced the<br/>11 cancellation of the long bond. And I was<br/>12 wondering, if they hadn't, would you have been<br/>13 surprised?</p> <p>14 MR. THEODOROU: Objection.</p> <p>15 A. No.</p> <p>16 Q. Why not?</p> <p>17 A. Nothing would surprise me. It's<br/>18 entirely possible that, you know, to the best of<br/>19 his understanding, speaking of Mr. Davis, that<br/>20 this is what Fisher had said.</p> <p>21 Maybe he can get it wrong. Maybe<br/>22 Mr. Fisher could -- maybe that's what he wanted<br/>23 to do but his supervisor could intervene. In<br/>24 fact, it's entirely plausible that would happen.</p> <p>25 The markets are uncertain about the</p>                       |

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| <p>1 growth in the economic environment, you know,<br/>2 we're at war now, maybe we should wait a few<br/>3 months even though we agree this is a good idea.<br/>4 Some supervisor might tell him, okay, let's<br/>5 wait. That would not surprise me.<br/>6 Q. Now, you mentioned that the market had<br/>7 moved up some ticks on the morning of<br/>8 October 31st before you traded in the 30-year<br/>9 bond.<br/>10 And I was wondering, would you have<br/>11 expected the market to move more than it had<br/>12 moved prior to the time you traded upon the<br/>13 release of information that the bond was being<br/>14 cancelled?<br/>15 A. Yes.<br/>16 Q. Why?<br/>17 A. I was worried that it might, and it<br/>18 represented a risk to me that I'd have to buy<br/>19 bonds at a higher price. It's a risk.<br/>20 Q. So just to clarify. I'm trying to<br/>21 find out if you would have expected -- I think<br/>22 you said the market had moved up eight to 10<br/>23 ticks prior to the time you traded or prior to<br/>24 the time you received the voicemail from<br/>25 Mr. Davis, is that right, you had noticed the</p> | <p>1 quarters of a point?<br/>2 MR. THEODOROU: Objection.<br/>3 A. Yes.<br/>4 Q. Why?<br/>5 A. I thought bonds represented value. I<br/>6 think that people are under invested in 30-year<br/>7 bonds.<br/>8 Peter Fisher at the Treasury thought<br/>9 the bond market would go down on this news, so<br/>10 as much as we know in hindsight what actually<br/>11 happened, at the point in time it wasn't<br/>12 apparent how the market would react.<br/>13 Q. When you first placed the order to<br/>14 trade 25 million bonds, 25 million 30-year bonds<br/>15 on October 31st, had you seen any news stories<br/>16 that day regarding Treasury's cancellation of<br/>17 the bond?<br/>18 MR. THEODOROU: Objection. Asked<br/>19 and answered.<br/>20 A. I'm sorry, could you just -- I just<br/>21 missed the beginning of your question. I'm<br/>22 sorry.<br/>23 Q. When you placed your order to buy 25<br/>24 million long bonds on October 31st, had you seen<br/>25 any news stories regarding Treasury's</p> |
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| <p>1 market move up eight to 10 ticks?<br/>2 A. No.<br/>3 Q. Okay. I'm sorry. What movement had<br/>4 you seen in the market prior to the time you<br/>5 received Mr. Davis's voicemail?<br/>6 MR. THEODOROU: Objection.<br/>7 MR. SHOPE: Objection.<br/>8 A. I believe the eight to 10 ticks you're<br/>9 referring to is the market had moved up when I<br/>10 received a phone call from a broker.<br/>11 Q. Okay. And then --<br/>12 A. And then there was subsequent --<br/>13 continued to move, probably an accelerated rate<br/>14 subsequent to that before listening to<br/>15 Mr. Davis's phone mail message, continued to<br/>16 move. So in total which is, I think, your<br/>17 question.<br/>18 Q. Yes.<br/>19 A. I believe, as I sit here now, and I'll<br/>20 have to review the price data to get a more<br/>21 accurate guess, but I believe the market was up<br/>22 half to three quarters of a point that morning.<br/>23 Q. Would you have expected the release of<br/>24 news that Treasury was cancelling the long bond<br/>25 to move the market more than half to three</p>  | <p>1 cancellation of the bonds?<br/>2 MR. THEODOROU: Objection.<br/>3 A. No.<br/>4 Q. Had you seen any press releases?<br/>5 MR. THEODOROU: Objection.<br/>6 A. No.<br/>7 Q. Did you ever check -- let me ask this:<br/>8 When did you actually see a report on a news<br/>9 service stating that Treasury had announced that<br/>10 it was cancelling the 30-year bond?<br/>11 MR. THEODOROU: Objection.<br/>12 A. I don't recall. Later in the day.<br/>13 Q. Later in the day on October 31st?<br/>14 A. I don't recall when I first saw it.<br/>15 Q. To clarify, do you recall if you saw<br/>16 it on October 31st?<br/>17 A. As I sit here now, I don't recall.<br/>18 You're asking a news wire?<br/>19 Q. News wire.<br/>20 A. Because it was in the paper the next<br/>21 day, obviously.<br/>22 Q. Right. I meant a news wire on<br/>23 October 31st.<br/>24 A. I don't recall.<br/>25 Q. Did you ever check Treasury's web site</p>  |

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| <p>1 on October 31st?</p> <p>2 A. Not that I remember.</p> <p>3 Q. Was Treasury's web site a resource</p> <p>4 that you used as a portfolio manager?</p> <p>5 A. No.</p> <p>6 Q. Prior to October --</p> <p>7 A. Just to clarify your question. I use</p> <p>8 on a regular basis? I used ever?</p> <p>9 I undoubtedly went to the Treasury web</p> <p>10 site, but it wasn't a regular tool that I would</p> <p>11 use.</p> <p>12 Q. Okay. But you had prior to</p> <p>13 October 31st visited the Treasury's web site?</p> <p>14 A. Not that I recall, but I --</p> <p>15 Q. Were you aware of what information was</p> <p>16 available on Treasury's web site prior to</p> <p>17 October 31st?</p> <p>18 MR. THEODOROU: Objection.</p> <p>19 A. No. I think that's where you go for</p> <p>20 visa information.</p> <p>21 MR. THEODOROU: Objection.</p> <p>22 You answered the question,</p> <p>23 Mr. Northern.</p> <p>24 MS. WILLIAMS: I'm sorry, I didn't</p> <p>25 understand -- I hadn't asked another question.</p> | <p>1 A. If you're asking if I'm aware of what</p> <p>2 information's on there, I think there is</p> <p>3 information related to getting passports.</p> <p>4 Q. Prior to trading in the 30-year bond</p> <p>5 on October 31st, did you see anything on the</p> <p>6 television regarding Treasury's cancellation of</p> <p>7 the 30-year bond?</p> <p>8 MR. THEODOROU: Objection.</p> <p>9 A. That morning?</p> <p>10 Q. Yes.</p> <p>11 A. No.</p> <p>12 Q. Had you received any E mails that</p> <p>13 morning regarding Treasury's cancellation of the</p> <p>14 30-year bond before you purchased the 25</p> <p>15 million?</p> <p>16 MR. THEODOROU: Objection.</p> <p>17 A. Not that I can remember.</p> <p>18 Q. Did you believe Treasury's decision to</p> <p>19 cancel the 30-year bond was market-sensitive</p> <p>20 information?</p> <p>21 A. Yes.</p> <p>22 Q. Now, you stated that Mr. Davis had</p> <p>23 mentioned a press release that was embargoed</p> <p>24 until 10 a.m.</p> <p>25 Who did you understand the embargo to</p> |
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| <p>1 MR. THEODOROU: Right.</p> <p>2 MS. WILLIAMS: So if he wasn't</p> <p>3 finished answering the question, then I don't --</p> <p>4 MR. THEODOROU: Well, did you</p> <p>5 answer the question that she asked as to what</p> <p>6 you knew?</p> <p>7 MS. WILLIAMS: I'm trying not to</p> <p>8 cut the witness off. I'd ask you not to cut the</p> <p>9 witness off.</p> <p>10 MR. THEODOROU: All right. Fine.</p> <p>11 I won't.</p> <p>12 MS. WILLIAMS: So I didn't know if</p> <p>13 he was finished.</p> <p>14 BY MS. WILLIAMS:</p> <p>15 Q. If you were not finished, then --</p> <p>16 MR. THEODOROU: Did you have</p> <p>17 something else to add?</p> <p>18 Q. Is there something else you wanted to</p> <p>19 add?</p> <p>20 MR. SHOPE: Could we have the</p> <p>21 question reread? Maybe that would help.</p> <p>22 THE WITNESS: I think that would be</p> <p>23 helpful, yeah.</p> <p>24 (Record read)</p> <p>25 Q. Anything else that you wanted to add?</p>   | <p>1 apply to?</p> <p>2 A. The press.</p> <p>3 Q. Did you understand Mr. Davis to be a</p> <p>4 member of the press on October 31st?</p> <p>5 A. No. I understood him to be Washington</p> <p>6 consultant.</p> <p>7 Q. Did you think the embargo applied to</p> <p>8 Mr. Davis?</p> <p>9 A. No.</p> <p>10 Q. Did you think the embargo applied to</p> <p>11 you?</p> <p>12 A. No.</p> <p>13 Q. Did you ever mention embargo to any of</p> <p>14 the other portfolio managers on October 31st?</p> <p>15 MR. THEODOROU: Objection.</p> <p>16 A. I believe it came up twice.</p> <p>17 Q. Could you tell me when it came up?</p> <p>18 A. First was with Mr. Cadogan, and he</p> <p>19 mentioned there was a quarterly refunding</p> <p>20 announcement that was to be released at 10.</p> <p>21 In which case I shared with him, oh,</p> <p>22 that's what Davis must have said was embargoed.</p> <p>23 I think at that point I did mention that.</p> <p>24 Q. Did you use the word embargo?</p> <p>25 A. Best I can recall, yes.</p>         |

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|--|---|
| <p>1 Q. And I know we talked about this</p> <p>2 yesterday. Is this the conversation that you</p> <p>3 had when you were standing at Mr. Kennedy's</p> <p>4 station behind Mr. Kennedy talking to</p> <p>5 Mr. Cadogan?</p> <p>6 MR. THEODOROU: Objection.</p> <p>7 A. Yes.</p> <p>8 Q. What, if anything, was said in</p> <p>9 response to your statement about embargo?</p> <p>10 A. I don't recall how Cadogan responded</p> <p>11 or if he responded.</p> <p>12 Q. Was your statement directed to anyone</p> <p>13 besides Mr. Cadogan?</p> <p>14 MR. THEODOROU: Objection.</p> <p>15 A. No. I was chatting directly with him.</p> <p>16 Q. Do you know if anyone overheard your</p> <p>17 statement about embargo?</p> <p>18 MR. THEODOROU: Objection.</p> <p>19 A. I don't know.</p> <p>20 Q. Did you think the embargo applied to</p> <p>21 any of your -- to Mr. Cadogan?</p> <p>22 MR. THEODOROU: Objection.</p> <p>23 A. No.</p> <p>24 Q. Why did you mention embargo to</p> <p>25 Mr. Cadogan?</p>  | <p>1 in his space where his work station was on the</p> <p>2 trading desk. We were having a discussion, he</p> <p>3 and I.</p> <p>4 We volunteered that we were each going</p> <p>5 to be buying 25 million. Other portfolio</p> <p>6 managers volunteered what they would be buying.</p> <p>7 At some point we summed it up, you</p> <p>8 know, with Mr. Cadogan. We verified that, yes,</p> <p>9 65 million, and we told him to go ahead and buy</p> <p>10 it.</p> <p>11 So it was entirely an oral</p> <p>12 communication on my part and Mr. Kennedy's part</p> <p>13 and Mr. Kurinsky's part and Mr. Smith's part.</p> <p>14 Q. What was Mr. Cadogan doing when you</p> <p>15 first got his attention to place this order?</p> <p>16 MR. THEODOROU: Objection.</p> <p>17 A. He was on the phone, I believe.</p> <p>18 Q. Do you know who he was talking to?</p> <p>19 A. No.</p> <p>20 Q. When you got his attention, what did</p> <p>21 he do with the phone?</p> <p>22 A. I don't know.</p> <p>23 Q. Do you recall if he put the person on</p> <p>24 hold to talk to you?</p> <p>25 MR. THEODOROU: Objection.</p>                                    |
| Page 256   | Page 258  |
| <p>1 MR. THEODOROU: Objection.</p> <p>2 A. As I mentioned earlier, it was -- for</p> <p>3 me it was one of these -- the only way I can</p> <p>4 describe it is a V-8 moment, oh, that's what</p> <p>5 Davis was talking about. That was, I think, the</p> <p>6 first I recalled that he had said something</p> <p>7 about that on the phone mail message, and it</p> <p>8 jogged my memory, oh, that's what he was talking</p> <p>9 about.</p> <p>10 Q. At the time you made this statement,</p> <p>11 had you already placed the order to purchase 25</p> <p>12 million long bonds?</p> <p>13 A. I don't know. I believe I'd given the</p> <p>14 order to Mr. Cadogan, and he was in the process</p> <p>15 of working on it, but I don't remember exactly.</p> <p>16 Q. How did you convey your order to</p> <p>17 Mr. Cadogan that morning?</p> <p>18 And I mean we talked about sometimes</p> <p>19 you put information in the FITS system,</p> <p>20 sometimes you gave verbal orders. I'm trying to</p> <p>21 find out how you conveyed the order for 25</p> <p>22 million long bonds to Mr. Cadogan on</p> <p>23 October 31st.</p> <p>24 MR. THEODOROU: Objection.</p> <p>25 A. I was standing adjacent to Mr. Kennedy</p> | <p>1 A. I don't know. I can't see across the</p> <p>2 desk what he's doing with his telephone.</p> <p>3 Q. Do you -- what steps did Mr. Cadogan</p> <p>4 take to execute the trade that morning?</p> <p>5 A. To my knowledge?</p> <p>6 Q. Yes.</p> <p>7 A. I don't -- I don't have specific</p> <p>8 knowledge of in terms of what he -- we leave</p> <p>9 that to him. He's the trader.</p> <p>10 Q. Was Mr. Cadogan still on the phone</p> <p>11 when you had the discussion with him regarding</p> <p>12 Treasury's having a quarterly refunding?</p> <p>13 A. No. He was chatting with me at that</p> <p>14 point.</p> <p>15 If it's helpful, you have to</p> <p>16 understand, the trading desk environment, you</p> <p>17 multi task. So you could well be on the phone</p> <p>18 or not be on the phone, put someone on hold and</p> <p>19 chat with me. I wouldn't know.</p> <p>20 Q. What, if anything, did Mr. Cadogan --</p> <p>21 sorry.</p> <p>22 Who did Mr. Cadogan contact to execute</p> <p>23 the trade? And I don't mean specifically the</p> <p>24 person. Do you know which firm he contacted?</p> <p>25 MR. THEODOROU: Objection.</p> |

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|---|---|
| <p>1 MR. SHOPE: And you're asking<br/>2 whether he knows today as opposed to at that<br/>3 moment.<br/>4 MS. WILLIAMS: No.<br/>5 BY MS. WILLIAMS:<br/>6 Q. I want to know on October 31st, do you<br/>7 know who he contacted?<br/>8 MR. SHOPE: Same objection.<br/>9 MR. THEODOROU: Objection.<br/>10 A. At what point in time?<br/>11 Q. At the time that Mr. Cadogan was<br/>12 executing the trade, did you know who he was<br/>13 calling to execute the trade?<br/>14 MR. THEODOROU: Objection.<br/>15 A. No, not that I can recall.<br/>16 Q. So just to clarify, you didn't<br/>17 overhear Mr. Cadogan talking to anyone to<br/>18 execute this trade, did you?<br/>19 MR. THEODOROU: Objection.<br/>20 A. No.<br/>21 Q. Do you know how much time elapsed<br/>22 between the time you gave Mr. Cadogan the order<br/>23 for the 65 million, you being you and your<br/>24 colleagues, and the time he executed the trade?<br/>25 A. No.</p>   | <p>1 BY MS. WILLIAMS:<br/>2 Q. Page 156, line 16 through line 25.<br/>3 MR. SHOPE: For completeness, could<br/>4 we have him review line -- page 155, line 24?<br/>5 It seems to be related to the question.<br/>6 MS. WILLIAMS: I have several<br/>7 questions --<br/>8 Q. You're welcome to review that as well.<br/>9 A. Okay.<br/>10 Q. Sure.<br/>11 (Pause)<br/>12 Q. Let me know when you're finished.<br/>13 (Pause)<br/>14 A. I'm sorry, to --<br/>15 Q. I was going to line 25 on page 156.<br/>16 A. Oh, okay.<br/>17 Q. Okay. And at line 16 there's a<br/>18 question, "Did Mr. Cadogan tell you that he had<br/>19 mentioned this information, this rumor, to<br/>20 Merrill Lynch prior to ten o'clock?"<br/>21 And the answer, "That's my<br/>22 understanding is that he was doing this<br/>23 transaction he was on the phone with them."<br/>24 My first question is when did you<br/>25 learn that Mr. Cadogan was on the phone with</p>   |
| Page 260  | Page 262  |
| <p>1 Q. What prompted the conversation with<br/>2 Mr. Cadogan about Treasury having a quarterly<br/>3 refunding conference?<br/>4 MR. THEODOROU: Objection.<br/>5 A. Do you mind just repeating that?<br/>6 Q. What prompted the conversation with<br/>7 Mr. Cadogan regarding Treasury having a<br/>8 quarterly refunding conference on October 31st?<br/>9 A. Mr. Cadogan volunteered that.<br/>10 Q. Was it in response to anything?<br/>11 A. I can't speak to why he volunteered<br/>12 that. He volunteered that.<br/>13 Q. Had you said anything to Mr. Cadogan<br/>14 prior to him volunteering that information?<br/>15 MR. THEODOROU: Objection.<br/>16 A. Possibly we were discussing, you know,<br/>17 how many bonds to buy, you know, the amount and<br/>18 giving him the instructions to go ahead and buy<br/>19 them.<br/>20 That was the extent of my interchange<br/>21 with him.<br/>22 Q. If I could refer you to Exhibit 2,<br/>23 page 156. One second.<br/>24 (Pause)<br/>25 MR. THEODOROU: Which page?</p> | <p>1 Merrill Lynch?<br/>2 A. I don't recall when he told me that.<br/>3 Q. At the time that he was executing the<br/>4 trade, though, did you know that he was on the<br/>5 phone with Merrill Lynch?<br/>6 A. I think we just covered that. No, I<br/>7 didn't.<br/>8 Q. Okay. And then the rest of your<br/>9 answer, "That's the reason he transacted -- when<br/>10 we bought 65 million bonds, he was on the phone.<br/>11 I'm standing across the opposite side of the<br/>12 desk. It's my understanding he was on the phone<br/>13 at the time with Merrill Lynch, and my<br/>14 understanding is that in that conversation that<br/>15 he shared with them we're hearing this."<br/>16 When did you reach the understanding<br/>17 that Mr. Cadogan was on the phone with Merrill<br/>18 Lynch at the time you gave him the order to buy<br/>19 65 million?<br/>20 MR. THEODOROU: You might want to<br/>21 turn to page 157, which is, "And you came to<br/>22 that understanding from what Mr. Cadogan told<br/>23 you?"<br/>24 MS. WILLIAMS: That's fine, but I'm<br/>25 going to ask that -- it can be the same answer.</p> |

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|---|---|
| <p>1 MR. THEODOROU: Independent of<br/>2 that. I just want to put it in context, that's<br/>3 all.<br/>4 MS. WILLIAMS: Sure.<br/>5 BY MS. WILLIAMS:<br/>6 Q. I'm trying to figure out when you came<br/>7 to the understanding that Mr. Cadogan was on the<br/>8 phone with Merrill Lynch when you gave him the<br/>9 order to buy 65 million bonds?<br/>10 A. I don't remember when. Mr. Cadogan<br/>11 told me that at some point. I don't remember at<br/>12 what point he told me that.<br/>13 Q. Do you know if he told you that on<br/>14 October 31, 2001?<br/>15 A. As we sit here now, I believe he did,<br/>16 but I don't recall when he told me that.<br/>17 Q. And then it says, "My understanding is<br/>18 that in that conversation that he shared with<br/>19 them we're hearing this."<br/>20 What is meant by the this in that<br/>21 sentence? What is your understanding<br/>22 Mr. Cadogan shared with Merrill Lynch?<br/>23 A. My understanding is he shared with<br/>24 them as openly as he could exactly what we were<br/>25 hearing.</p> | <p>1 Q. Yes, you being MFS, sorry, MFS high<br/>2 grade trading desk.<br/>3 A. Yes.<br/>4 But I have to be frank with you. I<br/>5 wasn't doing trades primarily, I think starting<br/>6 the beginning of 2001. So I actually lost a<br/>7 little bit of touch with who picked up the phone<br/>8 on the other end.<br/>9 But typically there's an assigned<br/>10 coverage person, and there's a backup. So<br/>11 there's a salesperson, but there are other<br/>12 people, if the salesperson is on another line<br/>13 pick up the line and can fully step in and take<br/>14 care of what the client needs to do to get a<br/>15 price on a trade or that sort of a thing.<br/>16 So there is an assigned coverage<br/>17 person, there's a senior person, and there's<br/>18 probably a team, so there can be more than one<br/>19 person.<br/>20 Q. And just to clarify, at the time that<br/>21 Mr. Cadogan executed this trade, you don't<br/>22 recall whether or not you had had the<br/>23 conversation with him about the refunding<br/>24 conference being taking place on October 31st?<br/>25 MR. THEODOROU: Objection.</p> |
| Page 264  | Page 266  |
| <p>1 Q. Which was?<br/>2 A. I don't know exactly what he shared<br/>3 with them, but our practice would be to be<br/>4 pretty open with people.<br/>5 So I would assume that he shared with<br/>6 them what we're here for the Board of Trade and<br/>7 that we heard from one of our analysts or<br/>8 consultants, same thing.<br/>9 Q. And how did you learn that Mr. --<br/>10 A. But I really have no knowledge of<br/>11 exactly what he shared.<br/>12 I think he told me that he shared<br/>13 this, you know, what we were hearing.<br/>14 Implicitly I would think he shared the whole<br/>15 circumstances of what we were seeing and<br/>16 hearing.<br/>17 Q. What, if anything, did Mr. Cadogan<br/>18 tell you that Merrill Lynch said in response to<br/>19 his sharing?<br/>20 MR. THEODOROU: Objection.<br/>21 A. I don't recall.<br/>22 Q. Did you have a regular salesperson at<br/>23 Merrill Lynch that you contacted to execute<br/>24 trades?<br/>25 A. You being MFS?</p>  | <p>1 A. Can you just phrase that?<br/>2 Q. Yeah. I just want to make sure that I<br/>3 understand that you had this conversation with<br/>4 Mr. Cadogan in which he told you Treasury was<br/>5 having a refunding conference, and I wanted to<br/>6 know if at the time Mr. Cadogan executed this<br/>7 trade, had you had that conversation with him?<br/>8 A. I don't know.<br/>9 Q. Did you enter the \$25 million trade in<br/>10 the FITS system on October 31st?<br/>11 Before I ask you that, can I ask<br/>12 something different? I'll come back to that.<br/>13 MR. SHOPE: Actually, would you<br/>14 have the last question and answer reread?<br/>15 (Record read)<br/>16 MR. SHOPE: Okay. That's fine.<br/>17 BY MS. WILLIAMS:<br/>18 Q. Before I go into the FITS system, you<br/>19 mentioned that embargo came up twice on<br/>20 October 31st. When's the second time the word<br/>21 embargo came up?<br/>22 MR. THEODOROU: In what context?<br/>23 MS. WILLIAMS: He said that he<br/>24 thought he mentioned embargo twice. The first<br/>25 occasion was with John Cadogan.</p>  |

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|---|--|
| <p>1 BY MS. WILLIAMS:</p> <p>2 Q. What was the second occasion?</p> <p>3 A. The second occasion was late in the</p> <p>4 day, towards the end of business.</p> <p>5 Q. Who were you speaking to?</p> <p>6 A. I was speaking directly with Mike</p> <p>7 Roberge who was part of a large group of</p> <p>8 colleagues that were waiting in the trading room</p> <p>9 for some sort of a visit from a potential</p> <p>10 client. I think it was Lucent Technologies was</p> <p>11 potentially going to be investing pension monies</p> <p>12 or something of this sort with MFS. And so they</p> <p>13 were waiting in the trading room.</p> <p>14 As I went from my desk to get some</p> <p>15 work done to over to my spot on the trading</p> <p>16 desk.</p> <p>17 Q. How did this discussion of embargo</p> <p>18 come up?</p> <p>19 A. They were having a discussion about a</p> <p>20 phone call that apparently Mr. Cadogan received</p> <p>21 from Merrill.</p> <p>22 Merrill apparently believed that they</p> <p>23 should get a price concession. Apparently they</p> <p>24 lost money that day on the trade that we'd done.</p> <p>25 And so as I was walking to my trading</p>                                | <p>1 take on.</p> <p>2 Q. And when you joined the group, what,</p> <p>3 if anything, did you say to the group?</p> <p>4 A. I explained to them that I thought</p> <p>5 that Merrill getting a concession on the trade</p> <p>6 was ridiculous.</p> <p>7 I further explained that if they'd</p> <p>8 lost money on it, it was because they had chosen</p> <p>9 to take a position. They had plenty of time to</p> <p>10 lay off the risk from the transaction they'd</p> <p>11 done with us.</p> <p>12 After they transacted with us, the</p> <p>13 market had been relatively stable, if not a</p> <p>14 little bit lower. So they could have covered</p> <p>15 that position quite readily but chose not to.</p> <p>16 I also went through a little bit of</p> <p>17 the history with them because they didn't have</p> <p>18 background in terms of what the actual issue was</p> <p>19 of cancelling 30-year Treasury.</p> <p>20 So I explained to them that this had</p> <p>21 been well rumored for a long period of time,</p> <p>22 that we actually thought they were going to do</p> <p>23 it that summer and that the postmortem that I</p> <p>24 had heard at the time was that the fellow in</p> <p>25 charge of domestic finance, while nominated,</p> |
| Page 268  | Page 270   |
| <p>1 desk position, I had to walk through this group.</p> <p>2 Before I walked through the group, I paused for</p> <p>3 just long enough to understand the gist of what</p> <p>4 they were talking about because I had more</p> <p>5 information about this than I knew they would.</p> <p>6 I asked them what they were talking</p> <p>7 about, and apparently that's what they were</p> <p>8 talking about. So we engaged in a conversation</p> <p>9 about that.</p> <p>10 Q. Who was in the group?</p> <p>11 A. As I recall, Joan Batchelder, John</p> <p>12 Cadogan, Mike Roberge, Robin Stelmach, and at</p> <p>13 least two or three other people.</p> <p>14 Q. Do you recall who those two or three</p> <p>15 other people are sitting here today?</p> <p>16 A. No.</p> <p>17 Q. What is Robin Stelmach's job at MFS?</p> <p>18 A. At the time?</p> <p>19 Q. Yes.</p> <p>20 A. She was part of the Fixed Income</p> <p>21 Department. She would take care of a lot of the</p> <p>22 operational side of our business. She was the</p> <p>23 one that ran the team, for example, that created</p> <p>24 FITS, our FITS income trading system. So that</p> <p>25 was a type of thing that -- a project she would</p> | <p>1 wasn't confirmed, so possibly he held off making</p> <p>2 the announcement because he might not have felt</p> <p>3 he had the authority to make that announcement.</p> <p>4 So in a sense this was his first hit</p> <p>5 at the cat, and in a lot of ways it's not that</p> <p>6 big a surprise.</p> <p>7 And I think I added from a portfolio</p> <p>8 port of view, I reiterated what we had been</p> <p>9 talking about the prior couple of weeks, that</p> <p>10 this was consistent with what we were doing and</p> <p>11 point of fact was what we were doing that day.</p> <p>12 And basically I went through, you</p> <p>13 know, the reasons why I'd cut my hand off before</p> <p>14 I'd give Merrill Lynch a dime.</p> <p>15 Q. How did the word embargo come up in</p> <p>16 this conversation?</p> <p>17 A. Towards the end, Mike Roberge asked,</p> <p>18 and I don't recall specifically what he said,</p> <p>19 but something to the effect, Did he say this was</p> <p>20 embargoed?</p> <p>21 Q. He being?</p> <p>22 A. Going to Mr. Davis.</p> <p>23 Q. Okay. What was your response?</p> <p>24 A. No.</p> <p>25 Q. And why did you respond no?</p>   |

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| <p>1 A. I was answering what I thought his<br/>2 real question was is did Davis tell us that we<br/>3 couldn't trade. And the answer was no.<br/>4 I never thought in my mind that we<br/>5 were in any way restricted from trading, and I<br/>6 never thought for a second that we'd done<br/>7 anything wrong.<br/>8 Q. Did Mr. Roberge use the word embargo?<br/>9 A. Yes.<br/>10 Q. Did you tell him that Mr. Davis had<br/>11 used the word embargo?<br/>12 A. No.<br/>13 Q. Did anyone say anything in response to<br/>14 your response which was no? Was there any other<br/>15 discussion?<br/>16 A. That was the end of the discussion.<br/>17 Q. Did you take any notes during this<br/>18 conversation?<br/>19 A. No.<br/>20 I was walking through this group.<br/>21 They were essentially killing time. And I think<br/>22 eventually they were stood up by Lucent and they<br/>23 never came. So they were waiting and waiting<br/>24 and killing time and chatting. I was trying to<br/>25 get some work done.</p>   | <p>1 MR. THEODOROU: That's not what his<br/>2 testimony was. Oh, he mentioning embargo.<br/>3 BY MS. WILLIAMS:<br/>4 Q. Your testimony is that he told<br/>5 Mr. Cadogan about embargo, and I wanted to know<br/>6 was the word embargo said to anyone else besides<br/>7 Mr. Cadogan?<br/>8 MR. THEODOROU: Objection.<br/>9 Q. Did you mention the word embargo to<br/>10 anyone else at MFS on October 31st besides<br/>11 Mr. Cadogan?<br/>12 A. No.<br/>13 Q. Do you recall --<br/>14 A. As best as I can recall.<br/>15 Q. Do you recall participating in any<br/>16 discussions on any subsequent days with<br/>17 co-workers at MFS regarding the word embargo?<br/>18 A. I can remember one other occasion.<br/>19 Q. Tell me about that occasion. When was<br/>20 that?<br/>21 A. Best I can recall, the following<br/>22 Wednesday.<br/>23 Q. And who were you speaking to?<br/>24 A. Joan Batchelder.<br/>25 Q. Anyone else?</p>  |
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| <p>1 This was an informal -- essentially it<br/>2 was a water-cooler conversation they were<br/>3 having. They were sort of hanging out in the<br/>4 trading room, sitting on the corners of the<br/>5 desks, killing time, waiting for a prospect that<br/>6 I think never showed up.<br/>7 Q. What was Mr. Roberge's position at MFS<br/>8 at the time? What was Mr. Roberge's position at<br/>9 MFS at the time?<br/>10 A. Mike Roberge was a young portfolio<br/>11 manager in the Unique Bond Department at the<br/>12 time.<br/>13 He was given responsibilities as an<br/>14 assistant to the director of research -- the<br/>15 director of credit research. And he was a<br/>16 member of my Fixed Income Policy Committee.<br/>17 Q. Did the word embargo come up with any<br/>18 other -- at any other conversations on<br/>19 October 31st?<br/>20 A. Not that I can remember.<br/>21 Q. So the only person that you recall<br/>22 mentioning embargo to on that date was<br/>23 Mr. Cadogan?<br/>24 MR. THEODOROU: Objection.<br/>25 MR. SHOPE: Objection.</p> | <p>1 A. She came to the trading desk<br/>2 accompanied by Don Mycrans.<br/>3 Q. Who is Don Mycrans?<br/>4 A. Don Mycrans had been hired pretty<br/>5 recently I think at that point. And he was<br/>6 coordinating our trading activities across the<br/>7 Fixed Income Department.<br/>8 Q. Did Mr. Mycrans have any supervisory<br/>9 authority over you on October 31st?<br/>10 A. No. He supervised the traders, I<br/>11 believe.<br/>12 Q. And where did this conversation take<br/>13 place?<br/>14 A. In the trading room on the 23rd floor.<br/>15 Q. Besides Miss Batchelder and<br/>16 Mr. Mycrans, was there anyone else involved in<br/>17 this conversation?<br/>18 A. No.<br/>19 Q. What happened -- what was said during<br/>20 the conversation?<br/>21 A. She had one question. She came up to<br/>22 my desk. I was at the trading -- at my desk in<br/>23 the trading room. She came up with Don Mycrans<br/>24 in tow and asked me, I believe, something to the<br/>25 effect did Davis or did -- did Davis or did he</p> |

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|---|--|
| <p>1 tell you that this was embargoed, that you<br/>2 couldn't trade on it.<br/>3 Q. What was your response?<br/>4 A. I answered no.<br/>5 Q. Why did you say no?<br/>6 A. That was the most forthright way I<br/>7 could answer the question. I was answering the<br/>8 question that I thought they wanted to ask.<br/>9 Q. What question did you think they<br/>10 wanted to ask?<br/>11 A. She asked the question, Did he say<br/>12 that we couldn't trade on this? And I said, No,<br/>13 he didn't.<br/>14 Q. Did Miss Batchelder use the word<br/>15 embargo?<br/>16 A. Yes.<br/>17 Q. Did you tell them that Mr. Davis had<br/>18 used the word embargo?<br/>19 A. No.<br/>20 Q. Did you tell Miss Batchelder that<br/>21 Mr. Davis had mentioned a press release?<br/>22 A. No.<br/>23 Q. Did you take any notes during this<br/>24 conversation?<br/>25 A. No.</p>   | <p>1 the press, the New York Times or the Journal<br/>2 referencing this. So he wanted to make sure I<br/>3 had seen it. Maybe it had information I hadn't<br/>4 seen already.<br/>5 Q. What did you say in the conversation?<br/>6 A. I don't recall. I think I already saw<br/>7 the article. I had read the paper.<br/>8 Q. Did embargo come up at all during this<br/>9 conversation?<br/>10 A. Not that I can recall.<br/>11 Q. At some point on October 31, 2001 did<br/>12 you become aware that Treasury had issued a<br/>13 press release announcing the cancellation of the<br/>14 30-year bond?<br/>15 A. Issued at some point?<br/>16 Q. Yes. Did you become aware on<br/>17 October 31st that Treasury had issued a --<br/>18 Treasury had issued a press release announcing<br/>19 the cancellation of the bond?<br/>20 A. Yes.<br/>21 Q. When did you become aware of<br/>22 Treasury's press release?<br/>23 A. I don't recall.<br/>24 Q. Do you know if it was before 10 a.m.?<br/>25 A. I don't remember.</p>  |
| Page 276  | Page 278   |
| <p>1 Q. Do you know if Ms. Batchelder took any<br/>2 notes?<br/>3 A. No.<br/>4 Q. Did you discuss this conversation with<br/>5 anyone else on the high grade trading desk?<br/>6 A. No.<br/>7 Q. Did you discuss it with anyone else at<br/>8 MFS, other than counsel?<br/>9 A. No.<br/>10 Q. Do you recall participating in any<br/>11 discussions with Mr. Kurinsky after October 31st<br/>12 regarding the \$65 million trade?<br/>13 A. I don't. I have conversations on an<br/>14 ongoing basis with Jeffrey. He works two desks<br/>15 away, so we meet on an ongoing basis. I don't<br/>16 recall, you know, any particular meeting with<br/>17 him.<br/>18 Q. Do you recall any discussions with<br/>19 Mr. Kennedy after October 31st about the<br/>20 \$65 million trade?<br/>21 A. Yes.<br/>22 Q. What do you recall about discussions<br/>23 with Mr. Kennedy?<br/>24 A. I believe he volunteered some day<br/>25 after October 31st that he'd seen an article in</p> | <p>1 Q. Do you know how you became aware of<br/>2 Treasury's press release?<br/>3 A. I don't remember. I know they put it<br/>4 out. I don't remember how I learned that.<br/>5 It was a bit messy because they put it<br/>6 out early, and I think there was talk about,<br/>7 hey, they put it out early.<br/>8 I don't remember specifically, you<br/>9 know, what conversation or when that occurred or<br/>10 how I learned it.<br/>11 Q. What was the first press release,<br/>12 either hard copy or electronic, that you saw<br/>13 announcing Treasury's cancellation of the bond?<br/>14 MR. THEODOROU: Objection.<br/>15 A. On October 31st?<br/>16 Q. If you saw it on October 31st, then<br/>17 yes.<br/>18 A. I don't recall seeing that quarterly<br/>19 refunding announcement.<br/>20 Q. No, my question's different.<br/>21 What, if any, news report by press<br/>22 service of any sort did you see -- what was the<br/>23 first press release, news story that you saw<br/>24 that mentioned that Treasury had cancelled the<br/>25 30-year bond?</p> |

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| <p>1 MR. SHOPE: Objection.</p> <p>2 A. I don't remember. I can tell you that</p> <p>3 I was at my trading desk, and undoubtedly it</p> <p>4 came across the news ticker, I saw it on a news</p> <p>5 ticker. I don't -- in fact, I doubt that I even</p> <p>6 pulled up the story. The story was the story,</p> <p>7 you know, what you have to read.</p> <p>8 Q. Okay. Do you know what time you saw</p> <p>9 the story?</p> <p>10 A. I don't.</p> <p>11 MR. THEODOROU: Erica, can we take</p> <p>12 a break?</p> <p>13 MS. WILLIAMS: Sure. I don't have</p> <p>14 much more, but yes.</p> <p>15 THE VIDEOGRAPHER: Going off the</p> <p>16 record, 10:21 a.m.</p> <p>17 (Recess taken)</p> <p>18 THE VIDEOGRAPHER: On the record,</p> <p>19 10:36 a.m.</p> <p>20 BY MS. WILLIAMS:</p> <p>21 Q. Mr. Northern, yesterday we were talking</p> <p>22 about the fact that you were fired from MFS, and</p> <p>23 one of the reasons you said that they provided</p> <p>24 you was because you weren't forthright.</p> <p>25 And I wanted to know if anything was</p>   | <p>1 Mr. Cadogan regarding Treasury's quarterly</p> <p>2 refunding conference taking place that day?</p> <p>3 A. Yes.</p> <p>4 Q. Had you seen any news announcements</p> <p>5 regarding the cancellation of the 30-year bond?</p> <p>6 A. Not that I can recall.</p> <p>7 Q. Why did you purchase an additional</p> <p>8 14.25 million?</p> <p>9 A. I needed 14.25 million additional for</p> <p>10 the portfolios.</p> <p>11 When I had done the initial trade for</p> <p>12 25 million, it was just a safe guess. After</p> <p>13 that transaction, I went back to my desk and put</p> <p>14 a pencil to paper and figured out more precisely</p> <p>15 how many I needed.</p> <p>16 I deliberately bought fewer than I</p> <p>17 knew I needed. I didn't know exactly how many I</p> <p>18 needed, so I went back and did the math. Total</p> <p>19 required another 14 and a quarter million.</p> <p>20 Q. Did you enter any information in the</p> <p>21 FITS system on October 31st regarding your</p> <p>22 trades in the 30-year bond?</p> <p>23 A. Yes.</p> <p>24 Q. What did you -- when did you enter</p> <p>25 information in the FITS system regarding the</p> |
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| <p>1 said regarding the conversation you had with</p> <p>2 Mr. Roberge and Miss Batchelder as one of the</p> <p>3 reasons what they fired you?</p> <p>4 A. No.</p> <p>5 Q. Did those conversations come up at all</p> <p>6 in their explanation as to why you were fired?</p> <p>7 A. No.</p> <p>8 Q. Did you make any other purchases in</p> <p>9 the 30-year bond --</p> <p>10 A. To the best of my recollection, I</p> <p>11 believe that statement was contained in a letter</p> <p>12 that they sent.</p> <p>13 Q. Okay. Did you make any other</p> <p>14 purchases in the 30-year bond on the morning of</p> <p>15 October 31st besides the 25 million?</p> <p>16 A. Yes.</p> <p>17 Q. What other purchase did you make?</p> <p>18 A. I put in an order. I bought an</p> <p>19 additional 14 and a quarter million, I believe.</p> <p>20 Q. How long after authorizing the order</p> <p>21 for 25 million did you place the order for 14.25</p> <p>22 million?</p> <p>23 A. I don't remember.</p> <p>24 Q. At the time you placed the order for</p> <p>25 14.25 million, had you had the conversation with</p> | <p>1 \$25 million purchase?</p> <p>2 A. Subsequent to the trade.</p> <p>3 Q. Was it prior to the \$14.25 million</p> <p>4 order being placed?</p> <p>5 A. I don't recall. We have a document</p> <p>6 that would show that for me.</p> <p>7 MS. WILLIAMS: I'd like to have</p> <p>8 this marked as Exhibit 11.</p> <p>9 (Exhibit 11 marked</p> <p>10 for identification)</p> <p>11 BY MS. WILLIAMS:</p> <p>12 Q. Is this the document that you're</p> <p>13 referring to, Mr. Northern?</p> <p>14 A. Yes.</p> <p>15 Q. What is this document?</p> <p>16 A. The print is awful small.</p> <p>17 Q. Sorry about that.</p> <p>18 A. This looks to be a blotter, which is</p> <p>19 to say a list taken out of one of MFS's systems</p> <p>20 of -- I can't even read the headers on this, but</p> <p>21 it looks to refer to the trades we did that</p> <p>22 morning on 10/31/2001.</p> <p>23 Q. Have you seen this document prior to</p> <p>24 today?</p> <p>25 A. I believe so, yes.</p>   |

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|---|--|
| <p>1 Q. Okay. If I could refer you to one,<br/>2 two, three, four, five, five lines down. If you<br/>3 go to the middle of the document, I see<br/>4 "nothern_s".<br/>5 Do you see that?<br/>6 A. Yes.<br/>7 Q. Okay. And next to that, to the right<br/>8 I see "October 31, 2001".<br/>9 Do you see that?<br/>10 A. Yes.<br/>11 Q. And "95134573AM".<br/>12 Do you see that?<br/>13 A. Yes.<br/>14 Q. And then if you go to the left of your<br/>15 name, nothern_s, I see a "B".<br/>16 Do you see that?<br/>17 A. Yes.<br/>18 Q. And then skip over two columns, and I<br/>19 see "25 million".<br/>20 Do you see that?<br/>21 A. Yes.<br/>22 Q. Okay. Does this entry reflect the<br/>23 purchase of 25 million bonds that you made on<br/>24 October 31st?<br/>25 A. Yes.</p>   | <p>1 A. It's when the portfolio managers enter<br/>2 the transaction into the system, the FITS<br/>3 system.<br/>4 Q. Does the FITS system show the<br/>5 execution time?<br/>6 A. The FITS system shows essentially a<br/>7 work flow, and it's showing when, I believe,<br/>8 different people that work on a trade finish<br/>9 entering the information.<br/>10 Q. Okay. So that is not the execution<br/>11 time?<br/>12 MR. THEODOROU: Objection.<br/>13 A. No, not necessarily.<br/>14 Q. Is the time that the order was<br/>15 actually placed with the trader reflected in the<br/>16 FITS system?<br/>17 MR. THEODOROU: Objection.<br/>18 A. Not necessarily.<br/>19 Q. Do you -- is the purchase of 14.25<br/>20 million 30-year bonds reflected on this first<br/>21 page of this document?<br/>22 A. I don't see it there. I see 12.25<br/>23 million. Is that right?<br/>24 Q. I see 12.25 million as well, and I was<br/>25 wondering how -- if that was at all related to</p>                      |
| Page 284  | Page 286   |
| <p>1 Q. What does the 95134573 represent?<br/>2 A. I can't make out the header on that.<br/>3 Q. It says, "Order creation time."<br/>4 A. And two columns to the right, what is<br/>5 the header on that one?<br/>6 Q. "Trade creation time."<br/>7 A. So one is order creation time, and the<br/>8 second is trade creation time?<br/>9 Q. Yes.<br/>10 A. I can't tell you. I don't know.<br/>11 Q. Can I refer you to Exhibit 2, page<br/>12 173, line 18.<br/>13 A. I'm sorry, which page?<br/>14 Q. Page 173, line 18.<br/>15 And that I'd like you to read through<br/>16 page 174, line three.<br/>17 (Pause)<br/>18 A. How far down?<br/>19 Q. Just 174, line three.<br/>20 A. Okay.<br/>21 Q. Okay. And I was wondering if that<br/>22 refreshes your recollection as to what the --<br/>23 what order creation time means?<br/>24 A. Yes.<br/>25 Q. What does it mean?</p> | <p>1 the purchase of 14.25?<br/>2 A. Either I'm wrong or -- but, yes, I<br/>3 think that's the trade I'm referring to.<br/>4 Q. Okay. Did you allocate any of that<br/>5 trade to any other portfolio manager?<br/>6 A. As I recall, yes.<br/>7 Q. Who?<br/>8 A. Peter Vaream.<br/>9 Q. How much did you allocate to<br/>10 Mr. Vaream?<br/>11 A. As best I can recall, 2 million.<br/>12 Q. Why did you allocate 2 million to<br/>13 Mr. Vaream?<br/>14 A. Mr. Vaream was off the trading desk<br/>15 when we did this trade.<br/>16 So subsequently when he returned,<br/>17 somebody informed him of what we'd done in the<br/>18 portfolios. And as was our practice, if he also<br/>19 needed to or wanted to, you know, participate in<br/>20 that trade, he would be able to. So he was<br/>21 allocated some of it.<br/>22 You don't want to penalize people for<br/>23 being off the trading desk. So if he's off, he<br/>24 has an opportunity to participate in the trade<br/>25 when he gets back.</p> |

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|---|--|
| <p>1 Q. Yesterday you mentioned some sales of<br/>2 intermediate securities on the morning of<br/>3 October 31st, and I was wondering if those sales<br/>4 are reflected anywhere in Exhibit 11?<br/>5 And I can refer you to one line on<br/>6 page two in the second group of data on that<br/>7 page. Do you see there's a little space, and<br/>8 there's a second group of data? Line three and<br/>9 the first line, I guess, of the first group of<br/>10 data.<br/>11 MR. THEODOROU: In the middle? I'm<br/>12 sorry.<br/>13 BY MS. WILLIAMS:<br/>14 Q. The first line on the page, and then<br/>15 the third line in the second group of data.<br/>16 There is a lot of data on this page. I want to<br/>17 try to refer to you passages.<br/>18 But my question is are those<br/>19 purchases, those three purchases you mentioned<br/>20 on this?<br/>21 MR. ROSSETTI: Sales?<br/>22 MS. WILLIAMS: Sales, sorry, sales.<br/>23 A. I am now looking at the third line in<br/>24 the second section that you mentioned?<br/>25 Q. Yes.</p> | <p>1 sales that you made that morning reflected on<br/>2 this document?<br/>3 A. Okay. The first line that you<br/>4 referred to on the top section, let's just<br/>5 review that one.<br/>6 That also says S, for sale. It<br/>7 doesn't reference the portfolio, though. It's<br/>8 also 7 million. So it may be same trade.<br/>9 (Pause)<br/>10 BY MS. WILLIAMS:<br/>11 Q. Do you see any other sales?<br/>12 A. I see one of the three.<br/>13 Q. Do you know why the other two are not<br/>14 reflected in this report?<br/>15 A. I don't.<br/>16 Q. How much money did you and --<br/>17 A. But --<br/>18 Q. I'm sorry?<br/>19 A. Half of this, there are several lines<br/>20 that are not legible.<br/>21 MR. THEODOROU: Just for the<br/>22 record --<br/>23 MR. SHOPE: Ms. Williams, before we<br/>24 try to tax Mr. Northern's vision anymore, and not<br/>25 to mention ours as well, I do have some</p>  |
| Page 288  | Page 290   |
| <p>1 A. And as I understand that, there's an<br/>2 S, for sale. I can't read that number entirely.<br/>3 It looks like 7 million. It looks like it's<br/>4 referring to a transaction done for MMT, Multi<br/>5 Market Income Trust.<br/>6 Q. Yes.<br/>7 A. And it's a US Treasury note. I think<br/>8 it's 6.875, May 15, 2006.<br/>9 Q. Yes.<br/>10 A. So at this point in time, that is a<br/>11 five-and-a-half-year security.<br/>12 Q. Okay. What about the first line on<br/>13 that page?<br/>14 A. I'm sorry. The other detail --<br/>15 Q. It's the same thing. Sorry.<br/>16 A. The other detail, there is a time<br/>17 stamp here. The column header is illegible.<br/>18 Q. I think "Order creation time, 9:26" --<br/>19 A. Cadogan.<br/>20 Q. Cadogan, yes, I see that.<br/>21 A. I don't know if that's execution time<br/>22 or creation time or what that is.<br/>23 Q. I was just reading the heading.<br/>24 Sorry.<br/>25 Besides that sale, are the other two</p>  | <p>1 documents here. And I'll represent that these<br/>2 have been produced to you. I don't have them<br/>3 with document numbers. And I have the three<br/>4 trades in question highlighted, so that might<br/>5 facilitate matters.<br/>6 MS. WILLIAMS: Okay.<br/>7 MR. SHOPE: I also had Mr. Toone E<br/>8 mail to me some other documents with the Bates<br/>9 numbers on them. And I can provide those to<br/>10 you. Unfortunately, my printer at home last<br/>11 night broke.<br/>12 MS. WILLIAMS: We'll talk about<br/>13 this after.<br/>14 You said this is part of Northern's<br/>15 production to us?<br/>16 MR. SHOPE: My understanding is<br/>17 that's part of Northern's or perhaps the MFS<br/>18 production which MFS made a production to you<br/>19 and so forth.<br/>20 MS. WILLIAMS: Okay. We'll talk<br/>21 about that after.<br/>22 BY MS. WILLIAMS:<br/>23 Q. Mr. Northern, do you know how much<br/>24 money you and the other portfolio managers made<br/>25 for the portfolios you managed as a result of</p> |

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|--|---|
| <p>1 the \$65 million trade in the 30-year bond?</p> <p>2 A. Made between when and when?</p> <p>3 Q. Do you know --</p> <p>4 A. Between then and year end I think we</p> <p>5 lost money.</p> <p>6 Q. Between that and the end of the day?</p> <p>7 A. I don't know. I don't. I think the</p> <p>8 market was up five points that day.</p> <p>9 Q. Do you recall -- you said the market</p> <p>10 was up five points. So by the end of the day,</p> <p>11 do you recall if you had made money in the</p> <p>12 portfolios you managed as a result of that</p> <p>13 trade?</p> <p>14 A. Yes. The bond continued to rally for</p> <p>15 several hours that morning.</p> <p>16 Q. Are you familiar with an entity called</p> <p>17 the Treasury Borrowing Advisory Committee? Were</p> <p>18 you aware of it in October of 2001?</p> <p>19 A. Yes.</p> <p>20 Q. What did you understand the Treasury</p> <p>21 Borrowing Advisory Committee to be?</p> <p>22 A. I understood it to be a group of</p> <p>23 industry professionals, primarily from Wall</p> <p>24 Street, from the brokers and investment banking</p> <p>25 community, generally somewhat distinguished</p> | <p>1 Bond Market Association, January 30, 2001.</p> <p>2 Had you seen this document prior to</p> <p>3 October 31, 2001?</p> <p>4 A. I don't recall having seen this.</p> <p>5 Q. I can refer you to page two of the</p> <p>6 document, the first full paragraph that starts,</p> <p>7 "The committee". It's only three sentences, if</p> <p>8 you could read that to yourself.</p> <p>9 (Pause)</p> <p>10 A. Okay.</p> <p>11 Q. Prior to October 31, 2001, had you</p> <p>12 ever heard anything about the Borrowing Advisory</p> <p>13 Committee recommending the elimination of the</p> <p>14 30-year bond?</p> <p>15 A. I don't recall. I may well have,</p> <p>16 though.</p> <p>17 Q. Prior to October 31, 2001, had you</p> <p>18 ever received a call from Peter Davis on the</p> <p>19 same day as a Treasury refunding announcement?</p> <p>20 A. I now know that I did. I don't have a</p> <p>21 memory of that phone call at all other than</p> <p>22 through materials that you've presented to me or</p> <p>23 that were actually presented at a deposition.</p> <p>24 Q. What was the date of that call?</p> <p>25 A. I don't recall.</p> |
| Page 292   | Page 294  |
| <p>1 members of the community.</p> <p>2 There was -- I think they're a</p> <p>3 self-selecting group. They would meet with</p> <p>4 Treasury on a regular basis. It would be a</p> <p>5 forum for Treasury to bounce ideas, take the</p> <p>6 temperature of the investment community, see</p> <p>7 what issues the investment community was</p> <p>8 concerned about or the brokerage community was</p> <p>9 concerned about, have them make recommendations</p> <p>10 on particular issues that Treasury might be</p> <p>11 considering.</p> <p>12 It was a forum for exchange of just</p> <p>13 views and ideas.</p> <p>14 Q. Prior to October 31st, had you ever</p> <p>15 reviewed any minutes from the Treasury Borrowing</p> <p>16 Advisory Committee meetings?</p> <p>17 A. Yes. They put out minutes or</p> <p>18 statements, and I had reviewed those.</p> <p>19 MS. WILLIAMS: I'd like this marked</p> <p>20 as Exhibit 12.</p> <p>21 (Exhibit 12 marked</p> <p>22 for identification)</p> <p>23 BY MS. WILLIAMS:</p> <p>24 Q. These are minutes of the meeting of</p> <p>25 the Treasury Borrowing Advisory Committee of the</p>                             | <p>1 MS. WILLIAMS: If I could have this</p> <p>2 marked as Exhibit 13.</p> <p>3 (Exhibit 13 marked</p> <p>4 for identification)</p> <p>5 BY MS. WILLIAMS:</p> <p>6 Q. Do you recognize this document,</p> <p>7 Mr. Northern?</p> <p>8 A. No.</p> <p>9 Q. Okay. This is a press release from</p> <p>10 the Office of Public Affairs, Treasury News.</p> <p>11 And the heading is Assistant Secretary For</p> <p>12 Financial Markets Brian Roseboro Remarks at the</p> <p>13 August 2001 Treasury Quarterly Refunding. The</p> <p>14 date is August 1, 2001.</p> <p>15 Are you aware that Treasury held a</p> <p>16 refunding conference on August 1, 2001?</p> <p>17 A. As we sit here today, I have no</p> <p>18 recollection of the August refunding.</p> <p>19 Q. Do you have any reason to doubt the</p> <p>20 accuracy of the date of this document?</p> <p>21 A. No.</p> <p>22 MS. WILLIAMS: If I could have this</p> <p>23 marked as Exhibit 14.</p> <p>24 (Exhibit 14 marked</p> <p>25 for identification)</p>  |

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| <p style="text-align: right;">Page 295</p> <p>1 BY MS. WILLIAMS:</p> <p>2 Q. Do you recognize this document?</p> <p>3 A. This may be the document that I had</p> <p>4 seen at a deposition.</p> <p>5 MR. SHOPE: Mr. Nothem, the</p> <p>6 question is whether or not you recognize the</p> <p>7 document.</p> <p>8 A. I don't.</p> <p>9 Q. Okay. These are telephone records</p> <p>10 from Peter Davis. At the top do you see the</p> <p>11 billing date August 19, 2001? Do you see that</p> <p>12 date?</p> <p>13 A. Yes.</p> <p>14 Q. If I could ask you to turn to what's</p> <p>15 Bates numbered SECNOTH00114098. And I wanted to</p> <p>16 know if you see your phone number anywhere on</p> <p>17 this document? And I'd refer you to line 20 and</p> <p>18 line 16.</p> <p>19 (Pause)</p> <p>20 BY MS. WILLIAMS:</p> <p>21 Q. Do you see your phone number anywhere</p> <p>22 on this document?</p> <p>23 A. The first you mentioned, yes.</p> <p>24 Q. And is that line 20?</p> <p>25 A. Yes.</p> | <p style="text-align: right;">Page 297</p> <p>1 MR. THEODOROU: Objection.</p> <p>2 A. I don't know.</p> <p>3 Q. Do you recall receiving calendars of</p> <p>4 events from Mr. Davis?</p> <p>5 A. Yes.</p> <p>6 Q. Did you review the calendars when you</p> <p>7 received them?</p> <p>8 A. No. It's not useful information for</p> <p>9 us.</p> <p>10 Q. Did you ever review the calendars when</p> <p>11 you received them?</p> <p>12 A. Yes, I'm sure I must have.</p> <p>13 MS. WILLIAMS: Let me have this</p> <p>14 marked as Exhibit 15.</p> <p>15 (Exhibit 15 marked</p> <p>16 for identification)</p> <p>17 BY MS. WILLIAMS:</p> <p>18 Q. Do you recognize this document?</p> <p>19 A. No.</p> <p>20 Q. If I could refer you to the first</p> <p>21 page, about 12 lines up from the bottom, and</p> <p>22 ask, do you see your E mail address reflected on</p> <p>23 this document?</p> <p>24 A. Yes.</p> <p>25 Q. This appears to be an E mail from</p>                                  |
| <p style="text-align: right;">Page 296</p> <p>1 Q. And as reading across, the date on</p> <p>2 that reflected on this document is 8/1/2001,</p> <p>3 time 9:39 a.m., and the call is to</p> <p>4 (617) 954-5887.</p> <p>5 Was that your phone number on</p> <p>6 August 1, 2001?</p> <p>7 A. Yes.</p> <p>8 Q. Do you recall receiving a call from</p> <p>9 Peter Davis on August 1, 2001?</p> <p>10 A. No.</p> <p>11 Q. The call appears to be 12 minutes long</p> <p>12 under minute of call, I see 12.</p> <p>13 Do you have any reason to doubt the</p> <p>14 accuracy of this phone record?</p> <p>15 A. No.</p> <p>16 Q. The number on line 16, (617) 563-7788,</p> <p>17 do you recognize that number?</p> <p>18 A. No.</p> <p>19 Q. Just to clarify, you don't recall</p> <p>20 receiving or talking to Mr. Davis on August 1,</p> <p>21 2001?</p> <p>22 A. No.</p> <p>23 Q. Did you receive weekly calendars from</p> <p>24 Peter Davis as part of the services he provided</p> <p>25 MFS?</p>      | <p style="text-align: right;">Page 298</p> <p>1 Peter Davis to blind carbon copying a variety of</p> <p>2 different people, and your E mail address</p> <p>3 appears under the BCC; is that correct?</p> <p>4 A. Yes.</p> <p>5 Q. And the date is Monday, October 29,</p> <p>6 2001.</p> <p>7 Do you see that date on the first page</p> <p>8 of the document?</p> <p>9 A. Yes.</p> <p>10 Q. Do you have any reason to believe you</p> <p>11 did not receive this E mail?</p> <p>12 A. No.</p> <p>13 Q. Do you recall seeing this E mail prior</p> <p>14 to October 31st?</p> <p>15 A. No, I don't recall seeing this E mail.</p> <p>16 Q. And on the third page of the E mail,</p> <p>17 about halfway down, more than halfway down, I</p> <p>18 see "Wednesday, 31."</p> <p>19 Do you see that?</p> <p>20 A. Yes.</p> <p>21 Q. "9 a.m., Fisher Treasury quarterly</p> <p>22 refunding, D.C."</p> <p>23 Do you see that?</p> <p>24 A. Yes.</p> <p>25 Q. Do you recall receiving any calendars</p> |

20 (Pages 295 to 298)

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| Page 299  | Page 301   |
|---|--|
| <p>1 prior to October 31st that included this</p> <p>2 information, "9 a.m., Fisher Treasury quarterly</p> <p>3 refunding"?</p> <p>4 A. No.</p> <p>5 MS. WILLIAMS: I'd like to have</p> <p>6 this marked as Exhibit 16.</p> <p>7 (Exhibit 16 marked</p> <p>8 for identification)</p> <p>9 BY MS. WILLIAMS:</p> <p>10 Q. Have you seen this document before,</p> <p>11 Mr. Nothern?</p> <p>12 A. No.</p> <p>13 Q. Did you recall seeing it prior to</p> <p>14 October 31, 2001?</p> <p>15 A. No. I didn't see this document.</p> <p>16 MS. WILLIAMS: I'd like to have</p> <p>17 this marked as Exhibit 17.</p> <p>18 (Exhibit 17 marked</p> <p>19 for identification)</p> <p>20 Q. Have you seen this document before,</p> <p>21 sir?</p> <p>22 A. Not that I can recall.</p> <p>23 Q. It appears to be a fax cover sheet</p> <p>24 dated October 30, 2001 to clients from Pete</p> <p>25 Davis. And it's five pages, including this</p>                 | <p>1 Mr. Nothern?</p> <p>2 A. As we sit here today, no, I don't.</p> <p>3 Q. I see that it's Bates stamped</p> <p>4 Nothern-0186 through 0195.</p> <p>5 Is this a document you produced in</p> <p>6 this litigation?</p> <p>7 A. I don't recall.</p> <p>8 Q. Do you know if this is a document you</p> <p>9 would have kept in your files?</p> <p>10 A. I don't recall this document.</p> <p>11 Q. Do you know who Bill O'Donnell is?</p> <p>12 A. Yes.</p> <p>13 Q. Who is he?</p> <p>14 A. Bill O'Donnell was a salesman with</p> <p>15 Greenwich Capital Securities. He was our</p> <p>16 coverage guy for government securities.</p> <p>17 Q. When you worked at MFS, did you</p> <p>18 have -- how often did you have contact with</p> <p>19 Mr. O'Donnell?</p> <p>20 A. Frequent telephone contact.</p> <p>21 Q. And did Mr. O'Donnell ever send you E</p> <p>22 mails?</p> <p>23 A. Yes.</p> <p>24 Q. Did you receive this document from</p> <p>25 Mr. O'Donnell?</p>   |
| Page 300  | Page 302   |
| <p>1 cover, charts from this morning's Treasury</p> <p>2 refunding follow.</p> <p>3 Do you recall ever receiving a fax</p> <p>4 from Mr. Davis with charts from a Treasury</p> <p>5 refunding?</p> <p>6 A. Yes.</p> <p>7 Q. When do you recall receiving charts</p> <p>8 from a refunding?</p> <p>9 Let me ask this: Prior to October 31,</p> <p>10 2001, do you recall receiving charts --</p> <p>11 A. Yes.</p> <p>12 Q. Do you recall how many -- did you</p> <p>13 receive charts from a refunding from Mr. Davis</p> <p>14 on more than one occasion?</p> <p>15 A. I don't recall.</p> <p>16 Q. Are you familiar with Treasury</p> <p>17 refunding previews that are put out by Greenwich</p> <p>18 Capital?</p> <p>19 A. No.</p> <p>20 MS. WILLIAMS: I'd like to have</p> <p>21 this marked as Exhibit 18.</p> <p>22 (Exhibit 18 marked</p> <p>23 for identification)</p> <p>24 BY MS. WILLIAMS:</p> <p>25 Q. Do you recognize this document,</p> | <p>1 A. I don't recall receiving this document</p> <p>2 from Bill O'Donnell.</p> <p>3 Q. Do you know how it got in your</p> <p>4 document production in this case?</p> <p>5 A. I don't recall.</p> <p>6 Q. The document entitled "Q4 Treasury</p> <p>7 Refunding Preview," and about halfway down it</p> <p>8 says, "Here are a few thoughts leading up to</p> <p>9 Wednesday's refunding announcement."</p> <p>10 Just to clarify, do you recall ever</p> <p>11 reading that statement prior to October 31,</p> <p>12 2001?</p> <p>13 A. No. I don't recall ever having seen</p> <p>14 this.</p> <p>15 MS. WILLIAMS: I'd like to have</p> <p>16 this marked as Exhibit 19.</p> <p>17 (Exhibit 19 marked</p> <p>18 for identification)</p> <p>19 BY MS. WILLIAMS:</p> <p>20 Q. Do you recognize this document, sir?</p> <p>21 A. No.</p> <p>22 Q. This also has Bates numbers</p> <p>23 Nothern-0225, and then the second document</p> <p>24 actually has a different Bates number,</p> <p>25 Nothern-1. I'm not sure how they got stapled</p> |

21 (Pages 299 to 302)

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|---|--|
| <p>1 together. In any event, I don't think they<br/>2 should be stapled together, but they are.<br/>3 Did you produce --<br/>4 MR. THEODOROU: That's the way that<br/>5 they --<br/>6 MS. WILLIAMS: I don't know why.<br/>7 MR. THEODOROU: Go ahead. He just<br/>8 tore the exhibit.<br/>9 MS. WILLIAMS: That's okay.<br/>10 MR. THEODOROU: It's one exhibit.<br/>11 BY MS. WILLIAMS:<br/>12 Q. Do you know how these documents were a<br/>13 part of your document production in this case?<br/>14 A. Apparently they are.<br/>15 Q. Do you know how they became part of<br/>16 your document production?<br/>17 A. I don't recall my document production.<br/>18 Q. Do you know if these were documents<br/>19 you kept in your file?<br/>20 A. I don't know.<br/>21 Q. What steps did you take when you were<br/>22 producing documents?<br/>23 A. I systematically went through my<br/>24 files. I systematically went through my Outlook<br/>25 E mail account to see if there was anything that</p>                           | <p>1 they were asking for.<br/>2 I also went through E mail with the<br/>3 Bloomberg system where there could potentially<br/>4 be relevant materials.<br/>5 And I believe I also looked at home<br/>6 for anything that might be related as well.<br/>7 Q. When you were at MFS, what was your<br/>8 practice regarding the deletion of E mails?<br/>9 A. My practice on Microsoft Outlook E<br/>10 mails was to pretty aggressively just delete<br/>11 them if I didn't need them further.<br/>12 If there was a document attached that<br/>13 was of interest, print the document, delete the<br/>14 file.<br/>15 Possibly if it was something that I<br/>16 might want to refer to later on, I would store<br/>17 it somewhere. But that's a bad practice.<br/>18 We just received way too many to be<br/>19 keeping even a few a day where it rapidly<br/>20 becomes unmanageable. So my practice was really<br/>21 to clean it up as quick as possible.<br/>22 Q. What about the Bloomberg E mail<br/>23 system, what was your practice regarding<br/>24 deletion?<br/>25 A. I don't -- I didn't use that all that</p> |
| Page 304  | Page 306   |
| <p>1 would be related in any way in accordance with a<br/>2 memo we received.<br/>3 MR. THEODOROU: Are you talking<br/>4 about when he was in MFS or in this litigation<br/>5 or both?<br/>6 MS. WILLIAMS: I'm talking about<br/>7 both.<br/>8 MR. THEODOROU: Okay.<br/>9 BY MS. WILLIAMS:<br/>10 Q. I'm sorry, were you finished?<br/>11 A. In terms of our document production,<br/>12 when I was working at MFS?<br/>13 Q. Yes.<br/>14 A. We received a memo with instructions<br/>15 on where to look.<br/>16 I remember I combed through my files.<br/>17 I went through every drawer and every file in my<br/>18 office. I did a comparable thing at my work<br/>19 location on the trading desk.<br/>20 I also went through my Outlook E mail<br/>21 folders, both the open ones and the deleted<br/>22 ones. I just went through anything I could find<br/>23 in there and produced -- subject to what the<br/>24 outline of what they wanted, I produced things<br/>25 that I found that would be consistent with what</p> | <p>1 much. I don't recall that you had to delete<br/>2 them.<br/>3 Q. Okay. Do you know who Joe Swirbalus<br/>4 is?<br/>5 A. Yes.<br/>6 Q. Who is he?<br/>7 A. I don't know Joe well. He was our<br/>8 coverage guy. He was assigned by JP Morgan in<br/>9 their Boston office here to cover our account<br/>10 with MFS.<br/>11 Q. Were you receiving E mails by<br/>12 Mr. Swirbalus while you were a portfolio manager<br/>13 at MFS?<br/>14 A. Yes.<br/>15 Q. Do you recall receiving this E mail<br/>16 from Mr. Swirbalus?<br/>17 A. No.<br/>18 Q. Do you recall ever seeing this E mail<br/>19 prior to October -- and I'm talking about the<br/>20 first page of Exhibit 19 -- prior to<br/>21 October 31st -- prior to 9 a.m. on October 31,<br/>22 2001?<br/>23 A. No.<br/>24 Q. What about the second page of this<br/>25 document, do you know R.J. O'Brien &amp; Associates?</p>  |

22 (Pages 303 to 306)

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| Page 307  | Page 309   |
|---|--|
| <p>1 A. I'm familiar with the name. I don't<br/>2 know them.<br/>3 Q. How are you familiar with the name?<br/>4 A. They were a firm that I -- that we did<br/>5 business with, not myself, but other one or<br/>6 other portfolio managers in my group.<br/>7 Q. Do you know who W.I. Partners is?<br/>8 A. No.<br/>9 Q. While at MFS, do you recall receiving<br/>10 any E mails addressed to W.I. Partners?<br/>11 A. No.<br/>12 Q. Do you recall seeing this document on<br/>13 October 31, 2001? That's page two of<br/>14 Exhibit 19.<br/>15 A. No.<br/>16 Q. And just to clarify, for page two of<br/>17 Exhibit 19, do you know how this document became<br/>18 part of your production?<br/>19 A. I don't recall.<br/>20 Q. Setting aside any depositions in this<br/>21 case, when's the last time you talked to<br/>22 Mr. Davis?<br/>23 A. I don't remember specifically. Some<br/>24 time around the October period. I believe he<br/>25 called concerning Treasury may be issuing war</p>                          | <p>1 depositions in this case, when's the last time<br/>2 you had any communication with Mr. Kennedy?<br/>3 A. I believe the same thing, February,<br/>4 early March period of 2002.<br/>5 Q. What about Mr. Kurinsky?<br/>6 A. Jeffrey's a friend. We've had<br/>7 contacts on an ongoing basis since I left MFS.<br/>8 Q. Have any of those contacts had to do<br/>9 with any trading that went on on October 31,<br/>10 2001?<br/>11 A. No, except in the most general sense<br/>12 that this case is still a pending case that I'm<br/>13 trying to clear my name.<br/>14 Q. Have you talked to Mr. Kurinsky since<br/>15 his deposition in this case?<br/>16 A. I may have once. I know we traded E<br/>17 mails. I can't recall if it was also telephone.<br/>18 Q. What was the subject of those E mails?<br/>19 A. I think he was proposing that we get<br/>20 together and go for a jog in Boston or something<br/>21 like that, get together for lunch, maybe go to<br/>22 the gym.<br/>23 Q. Did you get together with Mr. Kurinsky<br/>24 since his deposition in this matter?<br/>25 A. No.</p> |
| Page 308  | Page 310   |
| <p>1 bonds.<br/>2 Q. October of what year?<br/>3 A. Sorry, 2001.<br/>4 Q. I know you -- so prior to October 31,<br/>5 2001, you recall talking to Mr. Davis in the<br/>6 October period.<br/>7 What about any E mails, when's the<br/>8 last time you received an E mail from Mr. Davis?<br/>9 A. I don't recall. We kept him as a<br/>10 consultant through the end of my career at MFS,<br/>11 so we continued receiving materials from him<br/>12 through, in this case, February or early March<br/>13 of 2002.<br/>14 Q. Since leaving MFS and, again, setting<br/>15 aside any depositions in this case, have you had<br/>16 any contact Mr. Davis?<br/>17 A. No.<br/>18 Q. When is the last time, and, again, I<br/>19 want to set aside any deposition in this case,<br/>20 when's the last time you communicated with<br/>21 Mr. Smith, Rick Smith?<br/>22 A. Before I was terminated at MFS. So<br/>23 that would be February, early March period of<br/>24 2002.<br/>25 Q. What about Mr. Kennedy, setting aside</p> | <p>1 Q. What did you -- you said you think<br/>2 that there may have been a phone call. Do you<br/>3 recall what you talked to Mr. Kurinsky about?<br/>4 MR. THEODOROU: Objection.<br/>5 A. I don't recall whether we -- I know we<br/>6 communicated. Whether we communicated by phone<br/>7 or not, I don't know.<br/>8 Q. Have you had any business dealings<br/>9 with Mr. Kurinsky since you left MFS?<br/>10 A. Yes.<br/>11 Q. What dealings have you had with<br/>12 Mr. Kurinsky?<br/>13 A. It was with a firm that he was working<br/>14 at, a small hedge fund he set up with a mutual<br/>15 acquaintance Jim Delisle.<br/>16 Q. What was your involvement, if any, in<br/>17 that fund?<br/>18 A. I invested some money in Jim Delisle's<br/>19 hedge fund.<br/>20 Q. Is that fund also -- is Mr. Kurinsky<br/>21 also somehow affiliated with that fund?<br/>22 A. I think he was helping Jim with it. I<br/>23 don't know his business relationship. I think<br/>24 he was a partner. I think he put up some money<br/>25 for it.</p>  |

23 (Pages 307 to 310)

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| Page 311   | Page 313   |
|--|--|
| <p>1 Q. How much did you invest?</p> <p>2 A. I invested \$250,000.</p> <p>3 MS. WILLIAMS: Can we go off</p> <p>4 because we have five minutes left on the tape,</p> <p>5 and I think I have five minutes.</p> <p>6 MR. THEODOROU: Okay.</p> <p>7 THE VIDEOGRAPHER: Going off</p> <p>8 record, 11:23 a.m.</p> <p>9 (Recess taken)</p> <p>10 (Exhibit 20 marked</p> <p>11 for identification)</p> <p>12 THE VIDEOGRAPHER: This marks the</p> <p>13 beginning of videotape number five in the</p> <p>14 deposition of Steven Northern.</p> <p>15 On the record, 11:33 a.m.</p> <p>16 BY MS. WILLIAMS:</p> <p>17 Q. Mr. Northern, I asked the court</p> <p>18 reporter to mark this Exhibit 20 which is Bates</p> <p>19 number Northern-0307.</p> <p>20 Do you recognize this document?</p> <p>21 A. Yes.</p> <p>22 Q. What is it?</p> <p>23 A. This is an agenda from or proposed</p> <p>24 agenda from one of the two trips I mentioned</p> <p>25 that I had taken to Washington, D.C. that Pete</p>   | <p>1 look kind of neat starting with "Meet at 9 a.m."</p> <p>2 and "Our first meeting is."</p> <p>3 Are those two lines your handwriting?</p> <p>4 A. No, those are not my handwriting.</p> <p>5 There's a little bit of my handwriting above</p> <p>6 that, but those two lines are not.</p> <p>7 Q. Okay.</p> <p>8 A. Inside the text there are some</p> <p>9 somewhat scribbled notations that are mine.</p> <p>10 There is a notation in the left-hand</p> <p>11 column that does not look like mine.</p> <p>12 And the notations on the bottom of the</p> <p>13 page are all mine.</p> <p>14 Q. Okay. The one you said doesn't look</p> <p>15 like yours, is that under the column "Home</p> <p>16 number, cell number"?</p> <p>17 A. The notation that I mentioned on the</p> <p>18 left?</p> <p>19 Q. Oh, I'm sorry. On the left.</p> <p>20 A. There's a little scribble in there, I</p> <p>21 don't know what it is next to Wilcox, David.</p> <p>22 Q. Okay. Okay.</p> <p>23 A. I don't recognize that.</p> <p>24 Q. Okay. Could you just read your</p> <p>25 handwriting on the document?</p>  |
| Page 312   | Page 314   |
| <p>1 Davis had set up an itinerary. So this looks to</p> <p>2 be the itinerary of the proposed visits we would</p> <p>3 do that day.</p> <p>4 Q. At the bottom I see "Washington visit</p> <p>5 1-15-98."</p> <p>6 Do you see that?</p> <p>7 A. Yes.</p> <p>8 Q. Do you recall the visit being on</p> <p>9 January 15, 1998?</p> <p>10 A. I actually don't remember what year</p> <p>11 these were. I remember we visited early in the</p> <p>12 year, so January 15th, certainly. But '98, '99.</p> <p>13 They were back to back. It could have been '99,</p> <p>14 2000, but I don't have a recollection.</p> <p>15 Q. There's some handwriting on the</p> <p>16 document. Is any of the handwriting your</p> <p>17 handwriting?</p> <p>18 A. Yes.</p> <p>19 Q. If you could indicate generally -- if</p> <p>20 it's easier, you can tell me what handwriting is</p> <p>21 not yours; if not, if you could tell me which</p> <p>22 handwriting is yours.</p> <p>23 A. In general the neater handwriting is</p> <p>24 not mine.</p> <p>25 Q. So I see two lines at the top that</p> | <p>1 A. Yes. The top, the top right hand, and</p> <p>2 I apologize for the scrawl, "Adjusted and</p> <p>3 uncommitted."</p> <p>4 Q. Okay.</p> <p>5 A. On the line where it lists the second</p> <p>6 appointment, "Lister, Jim, Department of</p> <p>7 Treasury," I have a notation, "IMF liaison," and</p> <p>8 then some notations "17B" and below that it</p> <p>9 looks like "17B at Fed."</p> <p>10 Q. Okay.</p> <p>11 A. Below that, the third entry,</p> <p>12 "Anderson, Roger, Treasury," and, again, a</p> <p>13 scrawl, it looks something like "public issue."</p> <p>14 Below that, the line appointment with</p> <p>15 John Karl -- "Scholz, John Karl at US Treasury,"</p> <p>16 and I have a notation "tax proposals."</p> <p>17 And further across towards the right,</p> <p>18 I really can't make that out, it looks like "13</p> <p>19 months," M-O-S, abbreviated, underneath, "no</p> <p>20 reason."</p> <p>21 The following line, "Minarik, Joe at</p> <p>22 OMB," I have a notation "chief ec," for</p> <p>23 economist.</p> <p>24 At the bottom on the last appointment</p> <p>25 with Ken Kies, K-I-E-S, "Joint Committee on</p> |

24 (Pages 311 to 314)

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|--|--|
| <p style="text-align: right;">Page 315</p> <p>1 Taxation," there's a notation, it looks like<br/> 2 "election" an abbreviation for year slash<br/> 3 "divided government," government abbreviated<br/> 4 slash, and this I can't make out.<br/> 5 Q. Okay.<br/> 6 A. It looks like chocolates. I have no<br/> 7 idea what that is.<br/> 8 Q. It does look like chocolates.<br/> 9 A. Below that is "Good news_SS," Social<br/> 10 Security, "Bad news_minimum wage." I guess it's<br/> 11 good news for some. I'm sure that's bad news.<br/> 12 And below that "Auction cycle<br/> 13 changes."<br/> 14 Below that, "Surplus and IMF." I<br/> 15 can't make that out.<br/> 16 To the right, "Projecting slower<br/> 17 growth - no evidence really."<br/> 18 And then upside down on the bottom,<br/> 19 "Will have" it looks like an abbreviation<br/> 20 "statement on Social Security."<br/> 21 MS. WILLIAMS: Can I have this<br/> 22 marked as Exhibit 21.<br/> 23 (Exhibit 21 marked<br/> 24 for identification)<br/> 25 BY MS. WILLIAMS:</p>                             | <p style="text-align: right;">Page 317</p> <p>1 there is an underline notation "1.6B" for<br/> 2 billion, "aid to Columbia."<br/> 3 I have below that a phone number and a<br/> 4 notation "7 p.m., lobby."<br/> 5 At the bottom of the page there's a<br/> 6 little bit of notations of some math of "460,"<br/> 7 underneath it says "maturing," so it would be<br/> 8 460 billion maturing.<br/> 9 Excuse me, do you want me to try to<br/> 10 interpret this, or do you want me to just read<br/> 11 it?<br/> 12 Q. I kind of just want you to read it.<br/> 13 If I have a question, I'll go back.<br/> 14 A. Next to that is "140," and below that<br/> 15 "surplus," and then "dash 24" and underneath<br/> 16 that "tips".<br/> 17 Below that there's a notation "gross<br/> 18 160," below that "284B," for billion, "minus<br/> 19 foreign add on."<br/> 20 And below that, "without buyback,<br/> 21 260B," for billion.<br/> 22 Below that, two bullet points, "only<br/> 23 effect is spread of" I believe something "to on<br/> 24 the run."<br/> 25 Second bullet is "not effect on</p>   |
| <p style="text-align: right;">Page 316</p> <p>1 Q. Do you recognize Exhibit 21?<br/> 2 A. Yes.<br/> 3 Q. What is it?<br/> 4 A. This is also an agenda for a<br/> 5 meeting -- a series of meetings that Mr. Davis<br/> 6 organized for clients.<br/> 7 Q. And the date here is January 19, 2000.<br/> 8 Do you see that?<br/> 9 A. Yes.<br/> 10 Q. Do you recall if the meeting occurred<br/> 11 on or around January 19, 2000?<br/> 12 A. I don't have any independent<br/> 13 recollection other than this document, but I<br/> 14 have no reason to doubt this is correct.<br/> 15 Q. Do you recognize the handwriting on<br/> 16 this document? It's a two-page document.<br/> 17 A. Yes.<br/> 18 Q. Whose handwriting is this?<br/> 19 A. It's my handwriting.<br/> 20 Q. And just to help me out, could you<br/> 21 read the handwriting on this document?<br/> 22 A. Okay. There's some check marks where<br/> 23 it says -- at the beginning of some of the lines<br/> 24 I guess ticking off meetings that we had.<br/> 25 On the right-hand side, toward the top</p> | <p style="text-align: right;">Page 318</p> <p>1 interest" or "net effect on interest."<br/> 2 To the right of that, some bullet<br/> 3 questions. "Anything off limits? Biggest<br/> 4 priority?"<br/> 5 Two bullets below that, "Shift<br/> 6 maturity? Saving on interest expense? Ever<br/> 7 stop if it gets too small? Trot them back out?<br/> 8 Bad faith? Issue 8, I expect 8."<br/> 9 Second page, notes on the bottom --<br/> 10 actually, the notes on the top that -- I don't<br/> 11 recognize as being my handwriting.<br/> 12 Notes on the bottom, from two<br/> 13 meetings, one with Vince Reinhart, and the notes<br/> 14 are "Forecasts have been wrong for three and a<br/> 15 half years, 'seem to need mechanisms to damp<br/> 16 agg, as in aggregate, demand.'"<br/> 17 Couple of bullet points. "Small rise<br/> 18 in long rates, more in short rates."<br/> 19 Another bullet, "Concern that pressure<br/> 20 for fiscal restraint easing."<br/> 21 And one more line, "Looser fiscal<br/> 22 arrow pointing to tighter monetary...impact for<br/> 23 dollar?"<br/> 24 Below that some notes, meeting with<br/> 25 Lee Sachs, couple of bullets, "Av mat extends by</p> |

25 (Pages 315 to 318)

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January 31, 2007

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| Page 319  | Page 321   |
|---|--|
| <p>1 2004 to 7 and a half years."<br/> 2 Second bullet is "Debt retired, no<br/> 3 preference in objectives."<br/> 4 In quotes "'We are going to do what<br/> 5 Fed' (in coupon passes) does."<br/> 6 Q. Are you still invested in the fund<br/> 7 that Mr. Kurinsky told you about?<br/> 8 A. The Paid Vega Fund I think is what<br/> 9 you're referring to?<br/> 10 Q. Yes.<br/> 11 A. They closed some time last fall, so<br/> 12 I'm not.<br/> 13 Q. Did you receive any profit from being<br/> 14 invested in that fund?<br/> 15 A. I received most of my money back.<br/> 16 They had a small loss.<br/> 17 Q. By "most," do you mean not all of your<br/> 18 money?<br/> 19 A. They had a small loss for calendar<br/> 20 year -- for their operations in 2006.<br/> 21 Q. How much was the loss?<br/> 22 A. I don't recall specifically. It was<br/> 23 relatively modest. If I had to guess, 5,<br/> 24 10 percent.<br/> 25 This was a fund that was designed to</p> | <p>1 A. Yes.<br/> 2 Q. Whose handwriting is that?<br/> 3 A. Mine.<br/> 4 Q. Could you read that handwriting?<br/> 5 A. Yes. Up in the upper-right-hand area<br/> 6 there, there's a note, the name, "Eric" with a<br/> 7 number below it "57349".<br/> 8 And then there's a notation by<br/> 9 Bridgett Femino's name which says "Spray in<br/> 10 foam."<br/> 11 MR. ROSSETTI: I'm sorry, what is<br/> 12 that?<br/> 13 THE WITNESS: "Spray in foam," I<br/> 14 believe. It's a scribble.<br/> 15 BY MS. WILLIAMS:<br/> 16 Q. Do you know what "Spray in foam," why<br/> 17 that's written on here?<br/> 18 A. I don't remember. It was a piece of<br/> 19 paper that I just scribbled a note onto. I<br/> 20 can't remember why.<br/> 21 Q. What was Miss Femino's position at<br/> 22 MFS?<br/> 23 A. I don't know Bridgett Femino.<br/> 24 Q. Did you receive a copy of this invoice<br/> 25 while you were at MFS?</p>  |
| Page 320  | Page 322   |
| <p>1 be a hedge to other equity investments.<br/> 2 Q. Okay. Just a couple more quick<br/> 3 questions.<br/> 4 MS. WILLIAMS: Can you have this<br/> 5 marked as Exhibit 22.<br/> 6 (Exhibit 22 marked<br/> 7 for identification)<br/> 8 BY MS. WILLIAMS:<br/> 9 Q. Do you recognize this document,<br/> 10 Mr. Northern?<br/> 11 A. Yes.<br/> 12 Q. What is it?<br/> 13 A. This is a fax or a copy of a fax that<br/> 14 was sent by Davis Capital Investment Ideas to<br/> 15 Bridgett Femino, MFS Investment Management, Inc.<br/> 16 It's a bill for consulting services.<br/> 17 Q. How much did Davis Capital charge MFS<br/> 18 for its consulting services?<br/> 19 A. \$12,000 per year.<br/> 20 Q. Do you recognize the handwriting on<br/> 21 this document?<br/> 22 Setting aside this, it looks like a<br/> 23 signature next to "Thank you for your valued<br/> 24 business," do you recognize the other<br/> 25 handwriting?</p>                                | <p>1 A. Yes. I produced this, I believe.<br/> 2 Q. Did you generally receive copies of<br/> 3 invoices from Mr. Davis to MFS?<br/> 4 A. I don't think so. I think the reason<br/> 5 I received this one was because he wasn't paid<br/> 6 on time or something of that order.<br/> 7 Q. Did you have to approve the invoices<br/> 8 from Mr. Davis before they could be paid by MFS?<br/> 9 A. No.<br/> 10 Q. Last question.<br/> 11 MS. WILLIAMS: Can I have this<br/> 12 marked as Exhibit 23.<br/> 13 (Exhibit 23 marked<br/> 14 for identification)<br/> 15 BY MS. WILLIAMS:<br/> 16 Q. Do you recognize this document?<br/> 17 A. Yes.<br/> 18 Q. What is it?<br/> 19 A. This is a Treasury news bulletin, I<br/> 20 imagine, from the Office of Public Affairs.<br/> 21 It's a transcript of the remarks at the<br/> 22 November 2001 quarterly refunding by Under<br/> 23 Secretary of the Treasury for Domestic Finance<br/> 24 Peter Fisher.<br/> 25 Q. There's some handwriting on the</p> |

26 (Pages 319 to 322)

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| Page 323  | Page 325  |
|---|---|
| <p>1 document. Do you see the handwriting?</p> <p>2 A. Yes.</p> <p>3 Q. Do you know whose handwriting that is?</p> <p>4 A. Yes.</p> <p>5 Q. Whose handwriting?</p> <p>6 A. It's my handwriting.</p> <p>7 Q. When did you first see this document?</p> <p>8 A. I don't recall.</p> <p>9 Q. This is a document that's Bates</p> <p>10 stamped Nothern-0137 to 139.</p> <p>11 Is this a document that you kept in</p> <p>12 your file at MFS?</p> <p>13 A. Yes.</p> <p>14 Q. Why did you keep this document?</p> <p>15 A. I evidently had interest in some of</p> <p>16 the statistical information that's highlighted.</p> <p>17 Q. One last question. Were you</p> <p>18 Mr. Davis's point of contact at MFS?</p> <p>19 MR. THEODOROU: Objection.</p> <p>20 Go ahead.</p> <p>21 A. Not in any formal sense. I was the</p> <p>22 one that had originally found him and suggested</p> <p>23 that we use him as a consultant, but really it</p> <p>24 was for anybody to use him.</p> <p>25 MS. WILLIAMS: I have no further</p> | <p>1 CERTIFICATE</p> <p>2 I, STEVEN E. NOTHERN, do hereby certify</p> <p>3 that I have read the foregoing transcript of my</p> <p>4 testimony, and further certify that it is a true</p> <p>5 and accurate record of my testimony</p> <p>6</p> <p>7</p> <p>8 STEVEN E. NOTHERN</p> <p>9</p> <p>10</p> <p>11</p> <p>12</p> <p>13</p> <p>14</p> <p>15</p> <p>16</p> <p>17</p> <p>18</p> <p>19</p> <p>20</p> <p>21</p> <p>22</p> <p>23</p> <p>24</p> <p>25</p>   |
| Page 324  | Page 326  |
| <p>1 questions.</p> <p>2 MR. THEODOROU: Could we just have</p> <p>3 one minute? We'll step out. You stay here.</p> <p>4 THE VIDEOGRAPHER: Going off the</p> <p>5 record, 11:52 a.m.</p> <p>6 (Recess taken)</p> <p>7 THE VIDEOGRAPHER: On the record,</p> <p>8 11:53 a.m.</p> <p>9 MR. THEODOROU: We have no</p> <p>10 questions of Mr. Nothern. Thank you.</p> <p>11 MS. WILLIAMS: Thank you.</p> <p>12 THE VIDEOGRAPHER: This concludes</p> <p>13 the January 31, 2007 proceedings in the</p> <p>14 videotaped deposition of Steven Nothern.</p> <p>15 The number of tapes used is five.</p> <p>16 Going off the record, 11:53 a.m.</p> <p>17 (Whereupon the deposition was</p> <p>18 concluded at 11:53 a.m.)</p> <p>19</p> <p>20</p> <p>21</p> <p>22</p> <p>23</p> <p>24</p> <p>25</p>  | <p>1 COMMONWEALTH OF MASSACHUSETTS)</p> <p>2 SUFFOLK, SS. )</p> <p>3</p> <p>4 I, Daria L. Romano, RPR, CRR and Notary</p> <p>5 Public in and for the Commonwealth of</p> <p>6 Massachusetts, do hereby certify that there came</p> <p>7 before me on the 31st day of January, 2007, at</p> <p>8 9:13 a.m., the person hereinbefore named was</p> <p>9 duly sworn by me and that such deposition is a</p> <p>10 true record of the testimony given by the</p> <p>11 witness.</p> <p>12 I further certify that I am neither related</p> <p>13 to nor employed by any of the parties or counsel</p> <p>14 to this action, nor am I financially interested</p> <p>15 in the outcome of this action.</p> <p>16 In witness whereof, I have hereunto set my</p> <p>17 hand and seal this 7th day of February, 2007.</p> <p>18</p> <p>19</p> <p>20</p> <p>21</p> <p>22 Notary Public</p> <p>23 My Commission Expires</p> <p>24 March 15, 2013</p> <p>25</p> |

27 (Pages 323 to 326)

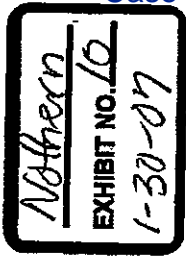
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Boston, MA

January 31, 2007

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November 12, 2001 8:37 am

Mass. Financial Services  
Department Report  
From 10/31/2001 To 10/31/2001

Company: 1 WFS  
Department: 113 Fixed Income  
Suo-Dept/RC#: 11310 Fix Inc Muni - Mgmt Ctr  
Building/Room: 8 23/241

Station: 55887 STEVEN E. NOTHERN  
PBX ID: MFS Mass. Financial Services

| Date                       | Time  | DAC | Dialed Number                    | Destination | Call Class  | PBX/Station | Calling # | Duration | Charge To |
|----------------------------|-------|-----|----------------------------------|-------------|-------------|-------------|-----------|----------|-----------|
| 10/31/2001                 | 9:37a |     | 55887                            |             | INBOUND DID |             | 202357624 | 0.80     | 0.00 D    |
| ..... Charge Summary ..... |       |     |                                  |             |             |             |           |          |           |
|                            |       |     | Type Of Charge                   |             | Calls       |             | Duration  |          | Charge    |
|                            |       |     | INBOUND DID                      |             | 1           |             | 0.80      |          | 0.00      |
|                            |       |     | Usage                            |             | 1           |             | 0.80      |          | 0.00      |
|                            |       |     | Total Telecommunications Charges |             | 1           |             | 0.80      |          | 0.00      |

CONFIDENTIAL TREATMENT  
REQUESTED BY MASS  
FINANCIAL SERVICES CO.  
# 000062

SECNOTH00129719

## **Exhibit K**

**Cited Excerpts from the Deposition of Lula Tyler  
(September 14, 2006)**

Lula Tyler

Washington, DC

September 14, 2006

Page 1

1 IN THE UNITED STATES DISTRICT COURT

2 FOR THE DISTRICT OF MASSACHUSETTS

3 - - - - - x

4 UNITED STATES SECURITIES AND :

5 EXCHANGE COMMISSION, :

6 Plaintiff, : Civil Action

7 vs. : No. 05-1-093 (NMG)

8 STEVEN E. NOTHERN, :

9 Defendant. : PAGES 1 - 182

10 - - - - - x

11 September 14, 2006

12 Washington, D.C.

13 Videotaped Deposition of LULA TYLER, held at the  
14 offices of Foley Hoag, LLP, 1875 K Street, Northwest,  
15 Washington, D.C., commencing at 1:18 p.m., Thursday,  
16 September 14, 2006, before Elizabeth Mingione, Notary  
17 Public.

18

19

20

21

22

| Page 54  | Page 56  |
|--|--|
| <p>1 reasons why I didn't want to come.</p> <p>2 BY MR. SHOPE:</p> <p>3 Q. Okay. All right. So, first of all, how</p> <p>4 did you first sort of come to learn that there was a</p> <p>5 Peter Davis?</p> <p>6 A. Well, Jill Ouseley told me, as far as I can</p> <p>7 recall, that somebody by the name of Pete Davis was</p> <p>8 going to be calling me so that he could get into the</p> <p>9 press conference, and that I was to get his</p> <p>10 information and allow him to come in for the press</p> <p>11 conference.</p> <p>12 Q. Okay. Now, you said as best you can recall</p> <p>13 it was Ms. Ouseley who told you to allow Mr. Davis</p> <p>14 into the press conference?</p> <p>15 A. Yes. I know it was her.</p> <p>16 Q. You are certain that it was her?</p> <p>17 A. Yes.</p> <p>18 Q. Okay. And would it be fair to say that at</p> <p>19 least while she was the director of the Office of</p> <p>20 Market Finance, or whatever it might have been called</p> <p>21 at that point, you would not have allowed Mr. Davis in</p> <p>22 or you would not have cleared him into the press</p>   | <p>1 1996.</p> <p>2 Q. And was that when President Clinton was</p> <p>3 still President?</p> <p>4 A. I guess so.</p> <p>5 Q. Now, do you know whether or not they ever</p> <p>6 handed out any materials at these quarterly refunding</p> <p>7 conferences, either at the meeting of the Borrowing</p> <p>8 Advisory Committee or at the press conference the next</p> <p>9 day?</p> <p>10 MR. ROSSETTI: Objection.</p> <p>11 A. They handed out information packages after</p> <p>12 the press conference the second day.</p> <p>13 Q. That was a regular practice?</p> <p>14 A. Yes. Yes. I believe it was.</p> <p>15 Q. Okay. Do you know whether there were ever</p> <p>16 materials that were made available the preceding day,</p> <p>17 like charts or something like that?</p> <p>18 A. You know, they were doing -- they did a lot</p> <p>19 of-- a lot of charts. And if they had the charts, it</p> <p>20 would have been for Treasury personnel, I believe.</p> <p>21 Because I didn't work directly with them with the</p> <p>22 charts and things like that.</p>   |
| Page 55  | Page 57  |
| <p>1 conference unless you had gotten Jill Ouseley's</p> <p>2 permission beforehand. Is that a fair statement?</p> <p>3 A. Yes. It is a fair statement.</p> <p>4 Q. Okay. And did Ms. Ouseley give you any</p> <p>5 explanation as to why it was that Mr. Davis was going</p> <p>6 to be attending this quarterly refunding conference or</p> <p>7 why it was that you should be clearing him in?</p> <p>8 A. No, she didn't.</p> <p>9 Q. Okay. And the -- now, and other than after</p> <p>10 October 2000 -- 2001, and we'll get into that period</p> <p>11 in a little bit, but before that did anybody ever ask</p> <p>12 you about Mr. Davis and, you know, why is Mr. Davis</p> <p>13 coming into this press conference?</p> <p>14 A. No. Nobody ever asked me anything about</p> <p>15 Mr. Davis.</p> <p>16 Q. Okay. Now, can you recall at all when it</p> <p>17 was that Ms. Ouseley told you to -- told you to</p> <p>18 start -- to allow Mr. Davis to attend the press</p> <p>19 conference or at least to clear him in?</p> <p>20 A. No. I don't remember the year. I really</p> <p>21 don't. I know it was prior to her being out on that</p> <p>22 extensive sick leave. So I suppose it was prior to</p> | <p>1 Q. Okay. You didn't work on the charts?</p> <p>2 A. No, I didn't.</p> <p>3 Q. Okay. Do you remember whether Mr. Davis</p> <p>4 ever wanted to get his hands on some of the charts?</p> <p>5 MR. ROSSETTI: Objection.</p> <p>6 A. I really don't know because I never went to</p> <p>7 the press conference. I don't know Mr. Davis. The</p> <p>8 only thing that I gave him -- I got from him was his</p> <p>9 name and his birth date.</p> <p>10 Q. Okay. Now, I want to get into the</p> <p>11 nitty-gritty on that. Was that -- is that something</p> <p>12 that you asked him for every time he was going to be</p> <p>13 coming in or did you have it written down somewhere?</p> <p>14 A. Well, over a period of time I had it</p> <p>15 written down. But he would call me and I would, when</p> <p>16 he called, then I would let -- give him access to the</p> <p>17 building, you know, clear him in.</p> <p>18 Q. And so when he called you would he -- would</p> <p>19 you say, oh, Mr. Davis, could you tell me again what</p> <p>20 your date of birth is and so forth?</p> <p>21 A. No. I had it written down.</p> <p>22 Q. Okay. Now, would you ever put him on the</p> |

| Page 58  | Page 60   |
|--|---|
| <p>1 list before he got around to calling you?</p> <p>2 A. No, I didn't.</p> <p>3 Q. Okay. Okay. Now, when he did call, did</p> <p>4 you go back to Ms. Ouseley each time and say, okay,</p> <p>5 should I let Mr. Davis in this time?</p> <p>6 A. Well, over a process of time she would --</p> <p>7 she had told me that it was all right for him to come</p> <p>8 to the press conference. So it was like I knew to let</p> <p>9 him in.</p> <p>10 Q. Okay. So you didn't have to keep coming</p> <p>11 back to her for permission?</p> <p>12 A. No.</p> <p>13 Q. Because she -- she had already given kind</p> <p>14 of a blanket permission?</p> <p>15 A. Yes.</p> <p>16 Q. Okay. And but then he would call you?</p> <p>17 A. Yes. He would have to call me.</p> <p>18 Q. And say please put me on the list; correct?</p> <p>19 A. Yes.</p> <p>20 Q. And then you would call down to the guard</p> <p>21 station or to the person who had the computer for the</p> <p>22 guard station to say, okay, Peter Davis, such and such</p>  | <p>1 first told me. No.</p> <p>2 Q. Okay. So --</p> <p>3 A. I don't think, let me see, no, I don't -- I</p> <p>4 don't know. Because I'm trying to -- I'm not sure. I</p> <p>5 don't think so.</p> <p>6 Q. Okay. So, in other words, your memory is</p> <p>7 that Ms. Ouseley told you to start admitting Mr. Davis</p> <p>8 to the quarterly refunding conference before</p> <p>9 Mr. Anderson joined the Treasury Department. Is that</p> <p>10 your best memory? Understanding that this was all a</p> <p>11 long time ago, just asking as best as you can recall.</p> <p>12 A. I think -- I'm not sure. Because he was</p> <p>13 there during the time she was ill, I believe, I think.</p> <p>14 I don't remember.</p> <p>15 Q. And your memory is -- your memory is that</p> <p>16 she told you to start admitting Mr. Davis before she</p> <p>17 went out on her sick leave; right?</p> <p>18 A. Yes.</p> <p>19 Q. So that would be consistent with her having</p> <p>20 told you to admit Mr. Davis before Mr. Anderson came</p> <p>21 on board?</p> <p>22 MR. ROSSETTI: Objection.</p> |
| Page 59  | Page 61   |
| <p>1 date of birth, put him on the list for the press</p> <p>2 conference?</p> <p>3 A. Yes.</p> <p>4 Q. Okay. Now do you know of a Roger Anderson?</p> <p>5 A. Yes. I know of him. He worked -- Jill</p> <p>6 worked under him. He was, he was Assistant Secretary,</p> <p>7 I think, of Federal Finance.</p> <p>8 Q. Did you ever do any secretarial work for</p> <p>9 Roger Anderson?</p> <p>10 A. No, I did not.</p> <p>11 Q. Did you ever mention to Mr. Anderson that</p> <p>12 Mr. Davis was going to be coming to the quarterly</p> <p>13 refunding conference?</p> <p>14 A. No, I didn't.</p> <p>15 Q. Okay. Was Mr. Anderson working at Treasury</p> <p>16 when Ms. Ouseley told you to start letting Mr. Davis</p> <p>17 attend the quarterly refunding conference?</p> <p>18 A. I'm -- I don't think he was working there</p> <p>19 when -- when she first told me. I don't think he was</p> <p>20 during that time. I think he probably came at some</p> <p>21 point in time during the period of time that he was</p> <p>22 coming, but he wasn't there during that time when she</p> | <p>1 Q. Is that fair?</p> <p>2 MR. ROSSETTI: I think that misstates facts</p> <p>3 or misstates her testimony.</p> <p>4 Q. Well, I'm asking it as a question. I am</p> <p>5 not trying to put words in your mouth.</p> <p>6 A. I am not sure about because they had</p> <p>7 such -- they had a big turnover in that office, and</p> <p>8 like every two to three years they would have</p> <p>9 assistant directors coming in there. So I am not</p> <p>10 really sure on that because I didn't work directly</p> <p>11 with Mr. Anderson, so I --</p> <p>12 Q. Okay. But in any event, would it be fair</p> <p>13 to say there was a period of several years that</p> <p>14 Mr. Davis was being admitted to the quarterly</p> <p>15 refunding conferences?</p> <p>16 A. Yes.</p> <p>17 Q. Okay. Now, did you ever hear of anyone</p> <p>18 before October 31, 2001, anyone objecting to</p> <p>19 Mr. Davis's attending the quarterly refunding</p> <p>20 conference?</p> <p>21 A. No, I did not.</p> <p>22 Q. Do you know whether or not Mr. Davis was</p>                                   |

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1 asked to sign anything in connection with his  
2 attending the quarterly refunding conference?  
3 A. I do not know.  
4 Q. Okay. Did you ever hear of there being any  
5 discussion of that as a possibility?  
6 A. No.  
7 Q. Okay. To your knowledge did Mr. Davis ever  
8 meet with Ms. Ouseley outside of the quarterly  
9 refunding conference? In other words, did he -- would  
10 he have a meeting for her on a day when there wasn't a  
11 quarterly refunding conference?  
12 A. He never came to our office. The only time  
13 I heard from him was during the refunding time. That  
14 was it. If he met with her, it was outside of the  
15 office.  
16 Q. So if Mr. Davis was going to have a lunch  
17 meeting with Jill Ouseley, you wouldn't necessarily  
18 have been knowing about that?  
19 MR. ROSSETTI: Objection.  
20 A. If he --  
21 Q. Is that -- is that fair?  
22 A. Not really. I mean most of the time if she

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1 was having a luncheon date with somebody, she would  
2 let me know, or either I would sometime on occasion  
3 make reservations. But most of the time she would let  
4 me know.  
5 Q. Okay. But if she was having a casual lunch  
6 that didn't -- wasn't a fancy restaurant that needed a  
7 reservation, she didn't have to tell you that she  
8 was --  
9 A. No. She didn't have to tell me.  
10 MR. ROSSETTI: Objection. You have just  
11 got to give me a second.  
12 THE WITNESS: I am sorry.  
13 MR. ROSSETTI: If I want to object. I know  
14 you want to get out of here. So do we.  
15 BY MR. SHOPE:  
16 Q. But it will go faster if you just pause for  
17 a second so that we can get a clear record. Now, have  
18 you ever heard of a press embargo?  
19 A. Um-hmm. Yes.  
20 Q. How have you heard about it?  
21 A. During the press -- when they announced  
22 the -- the bonds or the notes, I think at the end of

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1 it they would have something like a press release.  
2 And then it would have embargo at the end of it.  
3 Q. Okay. Now, how did you have occasion to  
4 look at the press releases for the bond funding  
5 announcements?  
6 A. Well, they came through our office and I  
7 kept them on file and --  
8 Q. Okay.  
9 A. So --  
10 Q. Okay. So these announcements would be  
11 drafted in the Office of Market Finance. Is that a  
12 fair statement?  
13 MR. ROSSETTI: Objection.  
14 A. Some of them would, I think. Yes.  
15 Q. Would Mr. Malvey sometimes participate in  
16 the drafting of these announcements?  
17 A. Yes.  
18 Q. And now when you were working as a  
19 secretary, sometimes would you type in changes that  
20 were being made to drafts of the refunding  
21 announcements?  
22 MR. ROSSETTI: Objection.

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1 A. I think so. But I really didn't work with  
2 those press releases directly.  
3 Q. Okay. Well, you said they would -- you  
4 said they would go through your office. So I'm trying  
5 to figure out how it was that you would be familiar  
6 with what they would say?  
7 A. I said the copies would come through our  
8 office and I would keep copies of all of them.  
9 Q. Oh, you would file them after the fact?  
10 A. Yes.  
11 Q. Okay. So just in the course of filing, you  
12 could glance at the document and see what it said?  
13 A. Yes.  
14 Q. Okay. Now, did anybody ever explain to you  
15 what was involved with the press embargo?  
16 A. No.  
17 Q. Okay. Did you ever discuss the press  
18 embargo with Mr. Davis?  
19 A. No. I did not.  
20 Q. Did you ever discuss the press embargo with  
21 anybody?  
22 A. No. I did not.

## **Exhibit L**

**Cited Excerpts from the  
Deposition of Roger Anderson  
(June 20, 2006)**

IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF NEW JERSEY  
CIVIL ACTION NO. CV-10983NMG  
USDC-DMASS

**ORIGINAL**

SECURITIES AND  
EXCHANGE COMMISSION,

Plaintiff,

vs.

STEVEN E. NOTHERN,

Defendant.  
-----

DEPOSITION UPON  
ORAL EXAMINATION  
OF

ROGER L. ANDERSON

T R A N S C R I P T of the deposition of ROGER  
L. ANDERSON, before ROSEMARY MARINO, a Certified  
Shorthand Reporter and Notary Public of the State of  
New Jersey, at the offices of MC CARTER & ENGLISH,  
Gateway 4, Newark, New Jersey on Tuesday, June 20,  
2006, commencing at 10:35 in the forenoon.

1 the day goes on sometimes it just gets a little  
2 harder to hear.  
3 Lawyers can be confusing. I think you are a  
4 lawyer yourself, you probably know that.  
5 A. I used to be.  
6 Q. You're a recovering lawyer then.  
7 A. Yes, exactly.  
8 Q. I am no exception to that rule, and so  
9 what I would ask is if I ever ask a question that you  
10 don't understand, if you could please pipe up and say  
11 that to me just so that we can make sure that your  
12 testimony is as accurate as it can be. Is that fair?  
13 A. Yes.  
14 Q. Now, do you recall receiving a subpoena  
15 for your deposition today, sir?  
16 A. I do.  
17 Q. And do you recall that the subpoena  
18 called upon you to bring documents that you might  
19 have.  
20 A. I do.  
21 Q. Did you bring any documents in  
22 connection with the subpoena?  
23 A. I did.  
24 Q. Okay, great. And is this the first time  
25 this morning that you've given copies of any of these

1 gathered everything that related to Peter Davis, for  
2 example?  
3 A. I reviewed -- I was quite sure that I  
4 had gone through all my records to find the  
5 information related to Peter Davis, yes.  
6 Q. I am not suggesting that you did  
7 anything improper, I just wanted to make sure there's  
8 a complete understanding of what the subpoena called  
9 for and so forth.  
10 A. I understand.  
11 Q. Well, perhaps, what we'll do is maybe in  
12 a little bit when we take a break I'll have a chance  
13 to go through these materials and then see if I have  
14 any questions for you about them. Okay?  
15 A. Okay.  
16 Q. Maybe just very briefly if you could  
17 give me a review of your educational and professional  
18 background leading up to the time that you began to  
19 work for the Treasury Department.  
20 A. I was graduated magna cum laude from  
21 Cornell University College of Arts and Sciences in  
22 1978; graduated cum laude from the University of  
23 Chicago Law School in 1981; clerked for then Chief  
24 Judge Daniel Friedman of the U.S. Court of Claims  
25 from 1981 to 1982; worked for the law firm of Cleary

1 documents to anyone?  
2 A. No, the subpoena called for copies of  
3 materials submitted to the SEC and so several of the  
4 pages are copies of materials earlier submitted to  
5 the SEC.  
6 Q. Okay. And is -- what did you do to  
7 gather the materials that were called for by the  
8 subpoena that was issued in this case?  
9 A. I went back and found my copies of the  
10 material that I had submitted to the SEC, I reviewed  
11 the records of the conversations I had with the SEC,  
12 that you called for, I reviewed my E-mail records as  
13 well as my contact records and my Rolodex for other  
14 information that you asked for.  
15 Q. And had you maintained copies of any  
16 notes that you had taken while you were at the  
17 Treasury Department?  
18 A. Yes, and I reviewed those when I replied  
19 to the SEC subpoena, so I did not review them again.  
20 Q. And was there a reason why you did not  
21 review them again?  
22 A. I reviewed them quite thoroughly when I  
23 replied to the SEC subpoena.  
24 Q. So, in other words, when you replied to  
25 the SEC subpoena you were quite sure that you

1 Gottlieb in New York from 1982 until 1990; worked for  
2 the New York City Controllers Office from 1990 to  
3 1994; and worked for Elmrock Capital from '94 to '95.  
4 Q. Just very briefly, what was your  
5 position at Elmrock Capital?  
6 A. Vice president at that point.  
7 Q. And in a one or two sentence description  
8 you could give of what your duties and  
9 responsibilities were as vice president of Elmrock  
10 Capital.  
11 A. It was a family investment office, and  
12 my responsibilities included reviewing potential  
13 investments as well as finding financing for  
14 investments that they wished to make.  
15 Q. And the -- at what point did you join  
16 the Treasury Department?  
17 A. June of 1995.  
18 Q. So you were working for Elmrock up until  
19 the point that you started to work for Treasury?  
20 A. I believe I took a week off in between.  
21 Q. Okay. And what was your first position  
22 when you worked for the Treasury Department?  
23 A. Senior advisor.  
24 Q. And what were your duties and  
25 responsibilities as senior advisor?

3 (Pages 6 to 9)

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1 refunding conference?  
 2 MS. WILLIAMS: Objection.  
 3 A. I don't recall.  
 4 Q. Okay. Is it possible that you then sort  
 5 of saw Mr. Davis at the quarterly refunding  
 6 conferences, but you didn't have any occasion to talk  
 7 to him.  
 8 MS. WILLIAMS: Objection.  
 9 A. Yes.  
 10 Q. What was the next time that you had any  
 11 interaction with Mr. Davis?  
 12 A. It was before one of the Wednesday press  
 13 conferences. He told me that there had been a prior  
 14 press conference where the press office had not --  
 15 had asked him to leave before it had started, and he  
 16 wondered if it was all right with me if he stayed. He  
 17 volunteered that he wouldn't ask any questions, and  
 18 then I told him, I made sure -- I told him that the  
 19 additional condition was that he honor the embargo.  
 20 He agreed to that, and I told him that I wouldn't get  
 21 in the way if the press office asked him to leave  
 22 again.  
 23 Q. Let me -- why don't we take this into  
 24 baby steps.  
 25 The occasion on which Mr. Davis told you that

1 A. Yes.  
 2 Q. Okay. And on the occasion of that  
 3 conversation that you had with Mr. Davis, you were  
 4 located in the Secretary's Conference Room during a  
 5 press conference; right?  
 6 MS. WILLIAMS: Objection.  
 7 A. No. It was prior to the press  
 8 conference and it was either in the back of the  
 9 conference room or outside, just outside the  
 10 conference room, I don't recall which.  
 11 Q. But when you say prior, you are meaning  
 12 just prior. In other words --  
 13 A. Yes.  
 14 Q. Okay. And so on that day, did you have  
 15 any understanding as to how it was that Mr. Davis had  
 16 gotten into the Treasury building so that he could  
 17 have the conversation with you just outside the press  
 18 conference room?  
 19 A. No.  
 20 Q. Okay. Now, this conversation in which  
 21 -- well, first of all, can you remember anything else  
 22 about what Mr. Davis recounted as far as the  
 23 circumstances of his having been asked to leave?  
 24 A. He said something to the effect that the  
 25 press office didn't consider him a member of the

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1 he had been asked to leave the press conference by  
 2 the press office, where were you physically during  
 3 that conversation with Mr. Davis?  
 4 A. I don't recall if it was the back of the  
 5 conference room or outside the conference room.  
 6 Q. So even though Mr. Davis had been asked  
 7 on the preceding occasion to leave the press  
 8 conference, nonetheless he had come again; is that  
 9 correct?  
 10 A. Yes.  
 11 MS. WILLIAMS: Objection.  
 12 Q. And did you have any understanding as to  
 13 how it was that Mr. Davis on that occasion, when you  
 14 were having -- the occasion of your having the  
 15 conversation with him, how it was that he had gotten  
 16 into the building?  
 17 A. Could you say that again?  
 18 Q. Sure.  
 19 A. There are too many negatives in there.  
 20 Q. I apologize. I am trying to be as  
 21 precise as possible.  
 22 There was the occasion of your having a  
 23 conversation with Mr. Davis in which he recounted  
 24 that he had been asked to leave a prior press  
 25 conference; correct?

1 press.  
 2 Q. Okay. And did you have any  
 3 understanding as to who at the press office was  
 4 seeking to exclude him from the press conference?  
 5 A. I believe it was Mr. Murchinson.  
 6 Q. And your response right then and there  
 7 to Mr. Davis was that subject to conditions you would  
 8 not oppose his remaining to attend the press  
 9 conference; correct?  
 10 A. Correct.  
 11 MS. WILLIAMS: Objection.  
 12 Q. And also that you would not oppose his  
 13 remaining to attend future press conferences of the  
 14 same nature.  
 15 A. That was implied.  
 16 Q. Now, the condition that you gave was  
 17 that he not disseminate the information at the press  
 18 conference until the embargo time; is that correct?  
 19 MS. WILLIAMS: Objection.  
 20 A. Correct.  
 21 Q. Okay. And now all of this is occurring  
 22 in the hallway outside the Secretary's Conference  
 23 Room?  
 24 MS. WILLIAMS: Objection.  
 25 A. This conversation occurred either in the

15 (Pages 54 to 57)

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1 hallway or in the back of the conference room.  
 2 Q. Okay. And I apologize, I wasn't trying  
 3 to change your testimony at all.  
 4 And, I take it, this was a fairly brief  
 5 conversation?  
 6 A. Yes.  
 7 Q. Okay. After that conversation -- first  
 8 of all, did you ask Mr. Davis to sign anything?  
 9 A. No.  
 10 Q. To your knowledge, did he sign anything?  
 11 A. Not to my knowledge.  
 12 Q. Did you ever go back to discuss the  
 13 matter with Mr. Murchinson?  
 14 A. No.  
 15 Q. Did Mr. Davis remain for the press  
 16 conference that very day?  
 17 A. I believe so.  
 18 Q. And he continued to attend press  
 19 conferences thereafter; correct?  
 20 A. I saw him at subsequent conferences. I  
 21 don't know if he came to every single one.  
 22 Q. Okay. After the conversation with  
 23 Mr. Davis that was either outside the Secretary's  
 24 Conference Room in the hall or in the back of the  
 25 conference room, and prior to the events of October

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1 Q. Did Mr. Murchinson report to you either  
 2 directly or indirectly?  
 3 A. No.  
 4 Q. To whom did he report?  
 5 A. I forget the title. There was a person,  
 6 Director of the Press Office, something like that, to  
 7 whom he reported, and then that person reported to  
 8 the deputy assistant secretary and assistant  
 9 secretary for public affairs.  
 10 Q. So that was a completely different chain  
 11 of reporting than the public finance chain in which  
 12 you were involved.  
 13 A. Yes.  
 14 Q. Okay. So did you ever come to hear how  
 15 it was that Mr. Davis was able to allay any  
 16 objections that the press office had had to his  
 17 attending the quarterly refunding conferences?  
 18 MS. WILLIAMS: Objection.  
 19 A. No.  
 20 Q. The -- was there a reason that you  
 21 didn't ask Mr. Davis to sign anything?  
 22 A. He had been introduced to me as a  
 23 Treasury regular, he indicated that he understood the  
 24 need for the embargo and his compliance, and would  
 25 comply with it, and it was right outside, right prior

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1 31, 2001, did you have any discussion with anybody  
 2 else about the circumstances of Mr. Davis attending  
 3 press conferences at Treasury?  
 4 A. I don't recall.  
 5 Q. Did you have any understanding as to how  
 6 Mr. Davis was getting into the building to attend the  
 7 quarterly refunding conferences after you had that  
 8 conversation with him out on the -- in the back of  
 9 the conference room or outside in the hall?  
 10 A. No.  
 11 Q. Who was your secretary during your  
 12 tenure at the Treasury?  
 13 A. Patricia Walton was my secretary for the  
 14 whole time. In addition, for the period of time  
 15 after Ms. Bradbury had left and before Mr. Gensler  
 16 started, Anna Hart reported to me. H A R T.  
 17 Q. Did a Lula Tyler ever work for you?  
 18 A. She was secretary to Ms. Ouseley.  
 19 Q. Now, Mr. Murchinson, I take it, he never  
 20 raised with you the issue of Mr. Davis' attendance at  
 21 the press conferences?  
 22 A. No.  
 23 Q. Did anyone else in the press office ever  
 24 raise that with you?  
 25 A. I don't recall anything like that, no.

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1 to the press conference, so there was no opportunity  
 2 or seemed to me at the time need for anything in  
 3 writing.  
 4 Q. Now, you said that you would not quote  
 5 get in the way if the press office wanted to continue  
 6 to exclude him; is that correct?  
 7 A. Yes.  
 8 Q. Why was that?  
 9 A. Because Mr. Murchinson didn't report to  
 10 me, it wasn't my -- I didn't have the authority to  
 11 overrule him.  
 12 Q. And just so I am clear, I take it, you  
 13 never consulted with anybody else about, at least  
 14 prior to October 31, 2001 you never consulted with  
 15 anybody else about the fact that you had told  
 16 Mr. Davis that you didn't object to his continuing to  
 17 attend the quarterly refunding conferences.  
 18 MS. WILLIAMS: Objection.  
 19 A. I don't recall.  
 20 Q. Now, after the conversation that took  
 21 place either in the back of the conference room or  
 22 outside in the hall, what was your next contact with  
 23 Mr. Davis?  
 24 A. It was either seeing him at another  
 25 quarterly conference or there was a meeting, he came

61

16 (Pages 58 to 61)

94

1 did you have any communication with anybody else  
2 about Mr. Youngdahl's case?  
3 A. I discussed it with people in New Jersey  
4 who knew Mr. -- who know Mr. Youngdahl, and I believe  
5 also with Mr. Malvey.  
6 Q. And what did -- in that connection, what  
7 did Mr. Malvey say to you and what did you say to  
8 Mr. Malvey?  
9 A. We were both surprised because we liked  
10 Mr. Youngdahl.  
11 Q. Anything else?  
12 A. No.  
13 Q. Did you discuss with Mr. Malvey whether  
14 or not there were other people at Goldman, Sachs who  
15 might have been aware prematurely of the suspension  
16 of issuance of the long bond?  
17 A. I don't recall.  
18 Q. Did you discuss with Mr. Malvey the  
19 possibility that other people besides Mr. Davis might  
20 have been aware prematurely of the decision to  
21 suspend issuance of the long bond?  
22 MS. WILLIAMS: Objection.  
23 A. No.  
24 MR. SHOPE: If I could just have a  
25 short break, I can go through my notes.

95

1 MS. WILLIAMS: Sure.  
2 (Recess.)  
3 Q. Just want to clarify a few things.  
4 First of all, just so I'm understanding the  
5 chronology correctly, Mr. Davis was attending the  
6 quarterly refunding conference before he ever had a  
7 conversation with you about following embargoes; is  
8 that correct?  
9 MS. WILLIAMS: Objection.  
10 A. That's my understanding.  
11 Q. And did you ever have any understanding  
12 as to the circumstances under which he had gotten  
13 into the quarterly refunding conferences prior to the  
14 conversation that you had about -- with him about the  
15 embargo?  
16 A. No.  
17 Q. Okay. And did you ever -- so you don't  
18 know whether it was Jill Ouseley, for example, who  
19 authorized him to attend?  
20 MS. WILLIAMS: Objection.  
21 A. I do not.  
22 Q. Now, I believe you testified that you  
23 said you would not stand in the way if the press  
24 office wanted to continue to exclude Mr. Davis from  
25 the quarterly refunding conferences; correct?

96

1 A. That's correct.  
2 MS. WILLIAMS: Objection.  
3 Q. Is it, in fact, the case that you,  
4 yourself, didn't really have authority to  
5 affirmatively admit Mr. Davis to the quarterly  
6 refunding conferences, you are simply stating that  
7 you, yourself, had no objection.  
8 MS. WILLIAMS: Objection.  
9 A. Correct.  
10 Q. Who would have had authority to admit  
11 Mr. Davis to the quarterly refunding conferences?  
12 A. Well, the press office dealt with the  
13 press people and the various Treasury offices decided  
14 which Treasury staff or Federal Reserve staff was  
15 there, and I took it upon myself to allow one of the  
16 Borrowing Advisory Committee members to attend one.  
17 Q. Now, when you said you took it upon  
18 yourself to allow one of the Borrowing Advisory  
19 Committee persons to attend, what did you have to do?  
20 A. I just invited him to stay.  
21 Q. Okay. Was that something he had  
22 requested or she had requested?  
23 A. No. This was back when the Borrowing  
24 Advisory Committee was making its report to the  
25 undersecretary Wednesday morning. He was not headed

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1 back to his office, it was his last meeting, I  
2 intended to say something to recognize his  
3 contributions at the press conference. So since he  
4 wasn't in a hurry to leave, I invited him to stay so  
5 that I could be public about our thanks for his  
6 efforts.  
7 Q. So you felt you had the authority to  
8 invite him.  
9 A. Yes.  
10 Q. Okay. But you didn't think that you had  
11 the authority to invite Mr. Davis.  
12 MS. WILLIAMS: Objection.  
13 Q. Is that fair?  
14 A. I didn't think I had the authority to  
15 overrule the press office.  
16 Q. Well, let me flip it around the other  
17 way.  
18 Let's suppose that the press office had no  
19 objection to his being there, but you didn't want him  
20 to be there, would you have had the authority to  
21 exclude him?  
22 A. Oh, I probably would have had a  
23 conversation with the press office about it, we would  
24 have come to an agreement one way or another, but I  
25 can't give a definite answer because it never

25 (Pages 94 to 97)

1 happened.

2 Q. Now, in theory if you and the press  
3 office had not been able to see eye-to-eye you would  
4 have had to go up higher in the chain of command in  
5 the Treasury; fair statement?

6 A. Yes.

7 Q. And I apologize if I asked you this.  
8 Did you or with your knowledge your secretary ever  
9 clear Mr. Davis into the quarterly refunding  
10 conference?

11 A. I did not and I don't know whether my  
12 secretary ever did.

13 Q. Was there ever any handouts at the  
14 quarterly refunding conferences besides press  
15 releases of the sort that we reviewed with Exhibit 1?

16 A. On Wednesday press conferences there  
17 would be traditionally three handouts, the press  
18 release, the recommendations of the Borrowing  
19 Advisory Committee and the minutes of the Borrowing  
20 Advisory Committee meeting as taken by member of the  
21 Treasury staff.

22 Q. Do you recall whether -- well, would Mr.  
23 Davis has received those handouts in the ordinary  
24 course if he attended the quarterly refunding  
25 conference?

1 whether or not there was ever a written agreement  
2 between -- that Treasury had made with Mr. Davis. Do  
3 you recall that?

4 A. Yes.

5 Q. Okay. What did Mr. Rossetti and Ms.  
6 Williams say to you and what did you say to them?

7 A. They asked me if I knew of such an  
8 agreement, I told them no. They mentioned that Mr.  
9 Davis had testified that there was such an agreement  
10 and I told them that my recollection was different.

11 Q. Okay. If -- now this is, we are talking  
12 about events that, if it did happen, it would have  
13 been around like ten years ago; right?

14 MS. WILLIAMS: Objection.

15 A. Nine or ten years ago, yes.

16 Q. So bearing that in mind, is it at least  
17 possible that you had some agreement or there was  
18 some agreement, written agreement with Mr. Davis and  
19 you just don't remember it?

20 A. I never had any agreement with Mr.  
21 Davis, no.

22 Q. I am talking about something you would  
23 have done on behalf of Treasury.

24 A. No.

25 Q. I know you don't remember having made

1 A. He could of.

2 Q. Do you remember whether or not he ever  
3 asked for those items or had expressed interest in  
4 those items?

5 A. I don't recall.

6 Q. Okay. Now, my client, Steven Nothorn,  
7 is he somebody that you know at all?

8 A. I don't recognize the name at all.

9 Q. Now, you mentioned before that although  
10 you weren't sure where it came from you had an  
11 understanding that if a reporter didn't follow the  
12 embargo the reporter would not be permitted to attend  
13 future refunding conferences. Did I remember that  
14 right?

15 A. Yes.

16 Q. Did that ever occur during, to your  
17 knowledge?

18 A. Not to my knowledge.

19 Q. And other than the one incident that you  
20 heard about with regard to Mr. Davis, did you ever  
21 hear about anyone else ever being excluded from a  
22 quarterly refunding conference?

23 A. No.

24 Q. You mentioned that you had discussed  
25 with Ms. Williams and Mr. Rossetti the question of

1 it, but if you had, is that the sort of thing that  
2 you would have held on to?

3 MS. WILLIAMS: Objection.

4 A. It is not something I would have  
5 considered part of my personal papers. Had there  
6 ever been such a document, it would have been part of  
7 an official Treasury paper.

8 Q. And where would a document like that be  
9 stored in Treasury?

10 MS. WILLIAMS: Objection.

11 A. I don't know.

12 Q. When you left Treasury, did you have --  
13 you had files that you had been maintaining in the  
14 course of your duties; correct?

15 A. Correct.

16 Q. What happened to those?

17 A. I left them there.

18 Q. Was there somebody who was charged with  
19 sort of going through your papers and figuring out  
20 whether they go to the archives?

21 A. I don't know. I mean there's a set  
22 procedure for the secretary, but certainly not for  
23 lower, and I don't know how far down the procedure  
24 goes.

25 Q. So nobody ever said to you in substance,

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1 hey, I've got to go through your papers and I've got  
 2 some questions about what relates to what?  
 3 A. No.  
 4 Q. Okay. So as far as you are aware, they  
 5 could have been just thrown into an incinerator?  
 6 A. I have no idea.  
 7 Q. Was there ever any change in the embargo  
 8 policy, to your knowledge?  
 9 MS. WILLIAMS: Objection.  
 10 A. My understanding is that after I left,  
 11 Treasury decided to establish -- instead of  
 12 establishing an embargo, each press conference that  
 13 might be different from quarter to quarter, establish  
 14 one announcement time that would be good all the time  
 15 depending on, therefore, the length of the press  
 16 conference, the embargo period itself might be  
 17 shorter or longer than prior quarters.  
 18 Q. By the way, during your tenure the  
 19 embargo time was being announced by the press  
 20 officer; right?  
 21 A. Yes.  
 22 Q. And do you know whether or not the press  
 23 officer would ever consult with the members of the  
 24 press to determine whether or not they thought that  
 25 that was an appropriate time, you know, appropriate

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1 length of time, amount of time they would need to  
 2 write their stories, that sort of thing?  
 3 A. He would say something like it's, I am  
 4 making these times up. For example, it's now 10:10,  
 5 we'll set the embargo for 10:25, everybody agreed,  
 6 and that was it.  
 7 Q. Okay. So that was an opportunity for  
 8 people to say no, I think it's not enough time or no,  
 9 I think it's too much time, whatever.  
 10 A. Well, nobody ever took that opportunity,  
 11 but it was an opportunity to say -- it would be an  
 12 opportunity for somebody to say I need more time.  
 13 Q. Subject to Ms. Williams' questions, I  
 14 have nothing further at this time. I may have a few  
 15 more after she asks you some questions.  
 16 CROSS-EXAMINATION BY MS. WILLIAMS:  
 17 Q. Mr. Anderson, I have a couple of  
 18 questions.  
 19 Just to clarify, you stated that the Treasury  
 20 refunding conferences took place over two days; is  
 21 that right?  
 22 A. The Borrowing Advisory Committee. The  
 23 whole refunding -- I wanted to clarify that there are  
 24 two public -- two announcement events. The one on  
 25 Tuesday morning, that was the public meeting of the

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1 Borrowing Advisory Committee where Treasury made the  
 2 economic report and some market report, and the next  
 3 day would be the refunding press announcement.  
 4 Q. Do you ever recall seeing Mr. Davis at  
 5 the Tuesday public meeting?  
 6 A. I believe so, yes.  
 7 Q. Do you ever recall seeing Mr. Davis at  
 8 the Tuesday public meeting before you had your  
 9 conversation with him when he asked permission to  
 10 attend the Wednesday meeting?  
 11 MR. SHOPE: Objection.  
 12 A. I am sorry, I can't recall the sequence.  
 13 Q. Do you know if Mr. Davis ever attended a  
 14 Wednesday press conference and was allowed to stay at  
 15 a Wednesday press conference prior to the  
 16 conversation that you had with him when he asked  
 17 permission to stay at a Wednesday conference?  
 18 MR. SHOPE: Note my objection.  
 19 A. It was my understanding that he did.  
 20 Q. That he had actually been allowed to  
 21 stay at a Wednesday press conference.  
 22 A. That he had attended a Wednesday press  
 23 conference.  
 24 Q. On what do you base that understanding?  
 25 A. He might have told me himself or I don't

105

1 recall specifically, I am sorry.  
 2 Q. Since you left Treasury in January '99,  
 3 have you attended any refunding conferences?  
 4 A. No.  
 5 Q. So you did not attend the October 31st,  
 6 2001 conference?  
 7 A. No.  
 8 Q. Just to clarify. Before you had your  
 9 conversation with Mr. Davis in which he asked  
 10 permission to stay at a Wednesday press conference,  
 11 do you recall ever seeing him at a Wednesday press  
 12 conference?  
 13 A. I don't recall.  
 14 Q. Now, going back to the conversation that  
 15 you had with Mr. Davis which was either inside the  
 16 conference room or right outside the conference room  
 17 in which he asked permission to attend the  
 18 conference, is it correct that you gave him  
 19 permission to attend -- when he asked permission to  
 20 attend, am I correct that you allowed him to attend  
 21 the conference that day?  
 22 MR. SHOPE: Objection.  
 23 A. I said I had no problem with him  
 24 attending on the basis of the conditions set forth  
 25 earlier.

27 (Pages 102 to 105)

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1 Q. Given your responsibility, isn't it  
2 likely you would have known about that if it  
3 happened?  
4 MS. WILLIAMS: Objection.  
5 Q. In other words, if there was such a  
6 policy.  
7 A. What we would talk about was the  
8 limitation until the release of the public  
9 information, which was inclusive.  
10 MR. SHOPE: If I could just have a  
11 moment.  
12 (Pause.)  
13 Q. You discussed security badges. Do you  
14 know whether Mr. Davis actually wore a badge?  
15 A. I don't recall.  
16 Q. And did I infer properly from your  
17 testimony that there were some people who simply  
18 ignored the requirement of wearing a badge?  
19 A. It was not uncommon for Treasury  
20 personnel to wear badges. It was not at all -- it  
21 was -- it would not have been at all common for  
22 visitors not to wear badges.  
23 Q. But if somebody was like an old Treasury  
24 hand recognized by the guards, it's possible that  
25 they weren't wearing a badge either; fair?

1 quarterly refunding press conferences; is that  
2 correct?  
3 MS. WILLIAMS: Objection.  
4 A. I did not discuss it with the press  
5 office, I don't recall whether or not I discussed it  
6 with anybody else.  
7 Q. I have nothing further.  
8 MS. WILLIAMS: I don't have anything  
9 more.  
10 (Exhibits attached to transcript.)  
11 (Deposition adjourned at 1:57 p.m.)  
12  
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14  
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121

1 MS. WILLIAMS: Objection.  
2 A. Not likely.  
3 Q. Why do you say that?  
4 A. Secret Service was very careful about  
5 admitting people and giving out badges.  
6 Q. Did you have an understanding as to why  
7 Mr. Davis was attending these refunding conferences?  
8 A. He told me that because he was writing  
9 his newsletter what he was looking for was color in  
10 terms of what was discussed that might not appear in  
11 the published press reports and beyond the dry words  
12 of the press release.  
13 Q. And given the fact that it was market  
14 moving information, did you have any concern that he  
15 might disclose the information in advance of the  
16 embargo?  
17 A. Well, A, he promised not to; and B, it  
18 was my understanding that since he was writing a  
19 newsletter, not -- his newsletter was published --  
20 wasn't published on a, you know, minute-by-minute  
21 basis.  
22 Q. But just so that I am clear, you had  
23 absolutely no follow-up with Mr. -- with the press  
24 office or anybody else at Treasury about the rules  
25 that would apply to Mr. Davis' attendance at the

1 JURAT  
2 I, ROGER L. ANDERSON, do hereby certify that I  
3 have read the foregoing transcript of my testimony,  
4 taken on June 20, 2006, and have signed it subject to  
5 the following changes:

| 6 | PAGE | LINE | CORRECTION |
|---|------|------|------------|
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ROGER L. ANDERSON

DATE:

Sworn and subscribed to before me on this ^ day of  
NOTARY PUBLIC \_\_\_\_\_

31 (Pages 118 to 121)

## **Exhibit M**

**Cited Excerpts from the Deposition of Elnora Bowser  
(February 12, 2008)**

Elnora Bowser

Washington, DC

February 12, 2008

Page 1

1 UNITED STATES DISTRICT COURT  
2 FOR THE DISTRICT OF MASSACHUSETTS  
3 - - - - - x  
4 UNITED STATES SECURITIES AND :  
EXCHANGE COMMISSION, :  
5 :  
Plaintiffs, :  
6 :  
v. : Civil Action No.  
7 :  
STEVEN E. NOTHERN, : 05-10983 (NMG)  
8 :  
Defendant. :  
9 - - - - - x

10  
11 Videotaped Deposition of ELNORA BOWSER  
12 Washington, D.C.  
13 Tuesday, February 12, 2008  
14 9:59 a.m.  
15  
16

17 \* \* \* \*

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19  
20  
21 Reported by: Okeemah S. Henderson, LSR  
22

Elnora Bowser

February 12, 2008

Washington, DC

| Page 46   | Page 48   |
|---|---|
| <p>1 BY MR. TOONE:</p> <p>2 Q. And all the way the last line on this</p> <p>3 page 2 of Exhibit 3, there is a name and below</p> <p>4 that is Davis, Peter, J. Do you see that?</p> <p>5 A. Yes.</p> <p>6 Q. And there's a date of birth that's</p> <p>7 listed as well?</p> <p>8 A. Uh-huh.</p> <p>9 Q. Do you have any idea what this</p> <p>10 document represents?</p> <p>11 MS. LEVINE: Objection.</p> <p>12 A. No. No, I don't.</p> <p>13 MR. TOONE: Let's skip ahead to the</p> <p>14 fifth page of this exhibit. Just for the record,</p> <p>15 the Bates label at the bottom is SEC NOTH</p> <p>16 00103605.</p> <p>17 BY MR. TOONE:</p> <p>18 Q. Have you seen this document before?</p> <p>19 A. No, sir.</p> <p>20 Q. There appears to be a form here called</p> <p>21 access control worksheet. Do you see that title?</p> <p>22 A. I see it now. I see this. Yes.</p> | <p>1 Q. And there's a name Davis, Peter?</p> <p>2 A. Yes.</p> <p>3 Q. And there's also a line for</p> <p>4 Mr. Davis's birth date there. Do you see that?</p> <p>5 A. Yes.</p> <p>6 Q. Are you able to interpret what this</p> <p>7 document means?</p> <p>8 MS. LEVINE: Objection.</p> <p>9 A. No.</p> <p>10 BY MR. TOONE:</p> <p>11 Q. Does this refresh your recollection as</p> <p>12 to thinking that might have happened in October,</p> <p>13 2001?</p> <p>14 A. No. Would this come from the Secret</p> <p>15 Service?</p> <p>16 Q. This document was provided by the</p> <p>17 Treasury Department, and at that time, Secret</p> <p>18 Service was a component of Treasury.</p> <p>19 A. No. Uh-huh.</p> <p>20 Q. So this doesn't jog any recollection</p> <p>21 at all?</p> <p>22 MS. LEVINE: Objection.</p>  |
| Page 47   | Page 49   |
| <p>1 Q. Do you know what an access control</p> <p>2 work sheet is?</p> <p>3 A. No, I don't.</p> <p>4 Q. Now, looking at this document, do you</p> <p>5 see a box for date?</p> <p>6 A. Yes.</p> <p>7 Q. And listed there is 10-30 and 10-31?</p> <p>8 A. Yes.</p> <p>9 Q. And there is a time and it is 08:45.</p> <p>10 Do you see that?</p> <p>11 A. Yes.</p> <p>12 Q. And under the box appointment with,</p> <p>13 there's the name Malvey?</p> <p>14 A. Yes.</p> <p>15 Q. And below that there's a box titled</p> <p>16 requested by and the name Bowser?</p> <p>17 A. Yes.</p> <p>18 Q. And then room No. 3327. And then all</p> <p>19 the way below in the box there is a listing for</p> <p>20 last name, first name, middle name. Do you see</p> <p>21 that?</p> <p>22 A. Yes.</p>   | <p>1 A. Doesn't jog a recollection whatsoever.</p> <p>2 Did Paul Malvey ever clear anybody in?</p> <p>3 MR. FREEBORNE: I'm sorry. He asks</p> <p>4 questions, you just answer them.</p> <p>5 A. I'm sorry.</p> <p>6 BY MR. TOONE:</p> <p>7 Q. Do you recall ever having any</p> <p>8 conversation with Paul Malvey regarding the</p> <p>9 admission of an individual to Treasury under any</p> <p>10 circumstances?</p> <p>11 A. No.</p> <p>12 Q. Do you recall any conversation with</p> <p>13 Lula Tyler regarding the admission of any</p> <p>14 individual into Treasury?</p> <p>15 A. No.</p> <p>16 Q. To your knowledge, has the Treasury</p> <p>17 Department ever used confidentiality agreements?</p> <p>18 MS. LEVINE: Objection.</p> <p>19 A. I don't know.</p> <p>20 BY MR. TOONE:</p> <p>21 Q. Have you ever seen a confidentiality</p> <p>22 agreement at Treasury?</p> |

13 (Pages 46 to 49)

Elnora Bowser

February 12, 2008

Washington, DC

| Page 50  | Page 52   |
|--|---|
| <p>1 A. No.</p> <p>2 Q. Are you aware of any agreement that</p> <p>3 may have been reached involved a man named Peter</p> <p>4 Davis?</p> <p>5 A. No.</p> <p>6 MS. LEVINE: Objection.</p> <p>7 BY MR. TOONE:</p> <p>8 Q. I'm sorry?</p> <p>9 A. No.</p> <p>10 BY MR. TOONE:</p> <p>11 Q. Do you know who Roger Anderson is?</p> <p>12 A. Roger Anderson, he worked there. I</p> <p>13 don't know what he was.</p> <p>14 Q. Do you know approximately when he</p> <p>15 worked at Treasury?</p> <p>16 A. No.</p> <p>17 Q. Did you ever work with Mr. Anderson in</p> <p>18 any capacity?</p> <p>19 A. No, I did not.</p> <p>20 Q. Did you ever speak with him?</p> <p>21 A. No, I did not.</p> <p>22 Q. Do you recall the Treasury Department</p>   | <p>1 (The last question was read back by the reporter.)</p> <p>2 MS. LEVINE: Objection.</p> <p>3 A. No.</p> <p>4 BY MR. TOONE:</p> <p>5 Q. Do you recall reading or hearing any</p> <p>6 news reports in November of 2001 concerning</p> <p>7 Treasury's announcement of its decision to suspend</p> <p>8 the 30-year bond?</p> <p>9 A. No.</p> <p>10 Q. Do you recall any news reports about</p> <p>11 alleged insider trading and that it occurred in</p> <p>12 connection with Treasury's decision to suspend</p> <p>13 issuance of the 30-year bond?</p> <p>14 MS. LEVINE: Objection.</p> <p>15 A. No.</p> <p>16 BY MR. TOONE:</p> <p>17 Q. Did anyone from Treasury speak with</p> <p>18 you in -- strike that. Did anyone from Treasury</p> <p>19 speak with you concerning anything that might have</p> <p>20 occurred in connection with the announcement of</p> <p>21 the decision to suspend the 30-year bond?</p> <p>22 A. No.</p> |
| Page 51  | Page 53   |
| <p>1 announcing on October 31st, 2001 its decision to</p> <p>2 suspend issuance of the 30-year bond?</p> <p>3 A. No.</p> <p>4 Q. Does that sound even vaguely familiar</p> <p>5 to you?</p> <p>6 A. No.</p> <p>7 Q. Do you recall where you were during</p> <p>8 the quarterly refunding press conference during</p> <p>9 October 31st, 2001?</p> <p>10 MR. FREEBORNE: I'm not sure a</p> <p>11 predicate has been laid for it, she said she</p> <p>12 doesn't recall, now you're asking her --</p> <p>13 Q. I'm sorry. She didn't recall the</p> <p>14 substance of this issue. I'm asking if she</p> <p>15 recalls where she was during --</p> <p>16 A. No, I don't.</p> <p>17 MR. TOONE: Let me restate the</p> <p>18 question.</p> <p>19 MS. LEVINE: I just want to get my</p> <p>20 objection on the record.</p> <p>21 MR. TOONE: Fine. Can we reread that</p> <p>22 question back?</p> | <p>1 -Q. Were you ever contacted by the general</p> <p>2 counsel's office?</p> <p>3 A. No.</p> <p>4 Q. Were you ever contacted by the Office</p> <p>5 of Inspector General?</p> <p>6 A. No.</p> <p>7 Q. Were you ever contacted by the SEC?</p> <p>8 A. No.</p> <p>9 Q. Have you ever spoken with the SEC at</p> <p>10 all?</p> <p>11 A. No.</p> <p>12 Q. Were you ever contacted by the U.S.</p> <p>13 Department of Justice other than your dealings</p> <p>14 with Mr. Freeborne here?</p> <p>15 A. No.</p> <p>16 Q. When was the last time you spoke to</p> <p>17 Paul Malvey?</p> <p>18 A. I haven't.</p> <p>19 Q. I'm sorry?</p> <p>20 A. I haven't.</p> <p>21 Q. You haven't since the time he left</p> <p>22 Treasury?</p>  |

14 (Pages 50 to 53)

## **Exhibit N**

**Cited Excerpts from the Deposition of Steven Berardi  
(February 12, 2008)**

Stephen Berardi

Washington, DC

February 12, 2008

Page 1

1 UNITED STATES DISTRICT COURT  
2 FOR THE DISTRICT OF MASSACHUSETTS  
Boston Division  
3 - - - - - x  
4 UNITED STATES SECURITIES AND :  
EXCHANGE COMMISSION, :  
5 Plaintiffs, :  
6 v. : Civil Action No.  
7 STEVEN E. NOTHERN, : 05-10983 (NMG)  
8 Defendant. :  
9 - - - - - x

10 Videotaped Deposition of STEPHEN BERARDI  
11 Washington, D.C.  
12 Tuesday, February 12, 2008  
13 11:32 a.m.

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20  
21 Reported by: Okeemah S. Henderson, LSR  
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Stephen Berardi

February 12, 2008

Washington, DC

| Page 38  | Page 40   |
|--|---|
| <p>1 A. She was the secretary for the</p> <p>2 director.</p> <p>3 Q. And in 2001, the director was Paul</p> <p>4 Malvey; is that correct?</p> <p>5 A. Yes.</p> <p>6 Q. Looking at the message all the way at</p> <p>7 the bottom of this E-mail from Lula Tyler to</p> <p>8 Frances Anderson, can you just read that to</p> <p>9 yourself quickly?</p> <p>10 A. (The witness complies.) Okay.</p> <p>11 Q. Ms. Tyler's message states, "Our</p> <p>12 Office of Market Finance needs a table in the back</p> <p>13 for handout materials after the press conference.</p> <p>14 Would that be a problem? Also Steve Berardi would</p> <p>15 like to look at the room so she can get a mental</p> <p>16 picture of where to place the table." Did I read</p> <p>17 that correctly?</p> <p>18 A. Yes.</p> <p>19 Q. Do you recall this exchange that you</p> <p>20 had with Ms. Tyler?</p> <p>21 A. Yes.</p> <p>22 Q. What exactly was going on at that</p>                        | <p>1 A. Yes.</p> <p>2 Q. And is this consistent with your</p> <p>3 recollection of what happened prior to the</p> <p>4 announcement?</p> <p>5 MS. LEVINE: Objection.</p> <p>6 A. After reading this here. Yes, but she</p> <p>7 wasn't responsible for watching the releases.</p> <p>8 BY MR. TOONE:</p> <p>9 Q. She wasn't?</p> <p>10 A. No.</p> <p>11 Q. Who was responsible?</p> <p>12 A. I was.</p> <p>13 Q. Why were you responsible?</p> <p>14 A. Because that was the task of our</p> <p>15 office.</p> <p>16 Q. What task?</p> <p>17 MS. LEVINE: Objection.</p> <p>18 A. Of distributing the copies of minutes,</p> <p>19 the reports, the charts and the tentative auction</p> <p>20 schedules after the embargo time had been set.</p> <p>21 BY MR. TOONE:</p> <p>22 Q. As of October, 2001, did Treasury have</p>  |
| Page 39  | Page 41   |
| <p>1 time?</p> <p>2 MS. LEVINE: Objection.</p> <p>3 BY MR. TOONE:</p> <p>4 Q. If you understand the question, you</p> <p>5 can answer.</p> <p>6 A. We were told late that afternoon that</p> <p>7 the normal room that we would be in was going to</p> <p>8 be changed to a smaller conference room.</p> <p>9 Q. And do you recall telling Ms. Tyler</p> <p>10 that you would like to look in the room before</p> <p>11 it's set up?</p> <p>12 A. Yes.</p> <p>13 Q. What was the purpose of doing that?</p> <p>14 A. I needed to see if there was room for</p> <p>15 a table to be set up so I could have the documents</p> <p>16 inside the room.</p> <p>17 Q. And then Ms. Anderson in response to</p> <p>18 Ms. Tyler, and this message is subsequently</p> <p>19 forwarded to you, Ms. Anderson wrote "Yes. There</p> <p>20 is no space for a table, it would have to go on</p> <p>21 the outside of the room and I'll watch the</p> <p>22 releases." Is that correct?</p> | <p>1 official policies on who could attend quarterly</p> <p>2 refunding announcements?</p> <p>3 MS. LEVINE: Objection.</p> <p>4 A. I do not know.</p> <p>5 BY MR. TOONE:</p> <p>6 Q. Which office was responsible for</p> <p>7 determining who could attend the announcements?</p> <p>8 A. I don't know which office was</p> <p>9 responsible. It was my understanding it was open</p> <p>10 to the public.</p> <p>11 Q. How many quarterly refunding</p> <p>12 announcements do you believe you attended prior to</p> <p>13 October 31st, 2001 approximate?</p> <p>14 A. All of them from May, 1991 forward</p> <p>15 except the October, 2001.</p> <p>16 Q. So for that 10-year period, you</p> <p>17 attended every quarterly refunding announcement?</p> <p>18 A. Yes.</p> <p>19 Q. What kind of people attended these</p> <p>20 announcements?</p> <p>21 MS. LEVINE: Objection.</p> <p>22 A. What do you mean by people?</p> |

11 (Pages 38 to 41)

Stephen Berardi

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| Page 66  | Page 68  |
|--|--|
| <p>1 Q. Aside from what you just described,<br/>2 are you aware of any other kind of agreement<br/>3 regarding the confidentiality of information at<br/>4 Treasury quarterly refunding announcements?<br/>5 MS. LEVINE: Objection.<br/>6 A. I have no knowledge, that would have<br/>7 been at the highest level of office.<br/>8 BY MR. TOONE:<br/>9 Q. Did Roger Anderson ever mention<br/>10 anything about an agreement he had reached with<br/>11 Peter Davis?<br/>12 MS. LEVINE: Objection.<br/>13 A. I have no knowledge of that.<br/>14 BY MR. TOONE:<br/>15 Q. Did Paul Malvey ever mention anything<br/>16 to you about any kind of agreement reached with<br/>17 Peter Davis?<br/>18 A. I just know that over time, Peter<br/>19 Davis showed up often to these press conferences<br/>20 and somebody was clearing him in, but I don't know<br/>21 that there was an agreement.<br/>22 Q. Do you have any idea how Mr. Davis got</p> | <p>1 A. I do.<br/>2 Q. Well, what's the answer?<br/>3 A. That would depend on the person<br/>4 whoever cleared them in, whether they said access<br/>5 to Treasury or that they were attending a<br/>6 conference in a particular room.<br/>7 Q. You say that Mr. Davis had been<br/>8 attending these announcements on a regular basis?<br/>9 A. I had seen him before. Yes. I don't<br/>10 know about regular but I had seen him before<br/>11 several times at least.<br/>12 Q. Can you characterize the frequency of<br/>13 Mr. Davis's attendance at these announcements?<br/>14 MS. LEVINE: Objection.<br/>15 A. Well, we have them four times a year.<br/>16 I don't recall exactly how many times per year he<br/>17 was there, but he was or if he was there every<br/>18 time but I know he was there several times, so I'm<br/>19 not sure the exact amount.<br/>20 BY MR. TOONE:<br/>21 Q. Are you aware of any other person who<br/>22 is not a member of the press or a government</p> |
| Page 67  | Page 69  |
| <p>1 cleared in to attend these announcements?<br/>2 A. Same way everyone else does, you have<br/>3 to submit your name, social security number and<br/>4 date.<br/>5 Q. Do you know who submitted that<br/>6 information?<br/>7 A. No, I do not.<br/>8 Q. You had earlier described the<br/>9 quarterly refunding announcements as open to the<br/>10 public; is that correct?<br/>11 A. Yes.<br/>12 Q. So now we're talking about clearing in<br/>13 Mr. Davis to the Treasury building; is that<br/>14 correct?<br/>15 A. He's a member of the public. Yes.<br/>16 Q. But when you say clearing Mr. Davis<br/>17 in, I'm just trying to understand your testimony.<br/>18 You're referring to clearing him into the Treasury<br/>19 building itself, not to the announcement room?<br/>20 MS. LEVINE: Objection.<br/>21 BY MR. TOONE:<br/>22 Q. Do you understand my question?</p>  | <p>1 employee who attended these quarterly refunding<br/>2 announcements?<br/>3 MS. LEVINE: Objection.<br/>4 A. I don't have any specific recollection<br/>5 of others but I'm sure over time there were, but I<br/>6 couldn't provide a name. I don't specifically<br/>7 remember.<br/>8 BY MR. TOONE:<br/>9 Q. You say that it was your belief that<br/>10 these announcements were open to the public?<br/>11 A. Yes.<br/>12 Q. Did it ever seem strange that you<br/>13 didn't see other consultants or members of private<br/>14 industry attending these announcements on a<br/>15 regular basis?<br/>16 MS. LEVINE: Objection.<br/>17 A. When you say strange, I didn't<br/>18 interact with these consultants the way a<br/>19 political appointee or someone else higher up in<br/>20 the office may have interacted with them. So I<br/>21 didn't take a head count or have to know who was<br/>22 attending these meetings. My function was to hand</p>                                   |

18 (Pages 66 to 69)

Stephen Berardi

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| Page 142   | Page 144  |
|--|---|
| <p>1 about, but it wouldn't have been -- it was</p> <p>2 perfectly normal for someone to come up afterwards</p> <p>3 and ask questions of whoever the political</p> <p>4 appointee or Public Affairs or the director of the</p> <p>5 office with a follow-up question.</p> <p>6 Q. It was normal for anyone attending the</p> <p>7 press conference to speak with a Treasury official</p> <p>8 afterwards?</p> <p>9 A. If they had a follow-up question.</p> <p>10 Yes.</p> <p>11 Q. Do you recall Peter Davis having that</p> <p>12 kind of conversation with Paul Malvey?</p> <p>13 A. I don't have specific recollection of</p> <p>14 that. No.</p> <p>15 Q. On October 31st, 2001, how long did</p> <p>16 the announcement by Peter Fisher last?</p> <p>17 A. As I have told my counsel, I haven't</p> <p>18 (inaudible) watch for 20 years, so I don't know.</p> <p>19 I'm -- I think it normally started around 9, they</p> <p>20 normally start a couple of minutes late, maybe</p> <p>21 sometimes 10 minutes late. I know it may have end</p> <p>22 at 9:30, 9:35. I don't recall exact time.</p> | <p>1 constantly monitoring both doors to see who was</p> <p>2 going in and coming out?</p> <p>3 A. I was sitting on the table with my</p> <p>4 hand on the boxes of documents. Was I actually</p> <p>5 monitoring who was going in and out? No.</p> <p>6 Q. You do recall, however, individuals</p> <p>7 entering the room after the announcement had</p> <p>8 started; is that correct?</p> <p>9 A. After the doors were closed for the --</p> <p>10 yes, mostly when the doors were closed for the</p> <p>11 press conference. Yes.</p> <p>12 Q. When you say mostly closed; is that</p> <p>13 right. What does mostly closed mean?</p> <p>14 A. Sometimes members of Public Affairs</p> <p>15 would go in and out, they would make phone calls</p> <p>16 or I think they ran out of the document so they</p> <p>17 had to come out and make a copy across the</p> <p>18 hallway.</p> <p>19 Q. And lastly, Ms. Levine asked you about</p> <p>20 people getting cleared in to attend the</p> <p>21 announcement?</p> <p>22 A. Yes.</p> |
| Page 143   | Page 145  |
| <p>1 Q. And you said you were at a table in</p> <p>2 the hallway?</p> <p>3 A. Yes.</p> <p>4 Q. Outside the doors to the diplomatic</p> <p>5 reception room?</p> <p>6 A. Yes.</p> <p>7 Q. And there were two sets of doors to</p> <p>8 the room?</p> <p>9 A. From what I recall. Yes.</p> <p>10 Q. And the table was located on the other</p> <p>11 side of the hallway between the two sets of doors?</p> <p>12 A. Yes. How far from?</p> <p>13 Q. Approximately how far from the table</p> <p>14 were each set of doors?</p> <p>15 A. Diagonally maybe 20 feet or so.</p> <p>16 Q. Each direction?</p> <p>17 A. Diagonally from one door to the table,</p> <p>18 from the other door to the table.</p> <p>19 Q. 20 feet from the table to one door, 20</p> <p>20 feet from the table to the door?</p> <p>21 A. Yes. Just guessing?</p> <p>22 Q. Were you, during this period,</p>   | <p>1 Q. And just so I understand, anyone who</p> <p>2 had managed to enter the Treasury building was</p> <p>3 able to enter the room where the press conference</p> <p>4 was being held; is that correct?</p> <p>5 A. I would say that was fair to say.</p> <p>6 Yes. If you had access to the building. Yes.</p> <p>7 Q. And access for any reason?</p> <p>8 A. Well, if you had specific access to</p> <p>9 the room and you were to be escorted, I don't</p> <p>10 think you would be allowed into that room.</p> <p>11 Q. Okay. So if you had access to the</p> <p>12 building without an escort, then you would have</p> <p>13 also been able to enter the room where this</p> <p>14 announcement was being made?</p> <p>15 A. I believe so. Yes. Since it was open</p> <p>16</p> <p>17</p> <p>18</p> <p>19</p> <p>20</p> <p>21</p> <p>22</p>  |

37 (Pages 142 to 145)

Stephen Berardi

February 12, 2008

Washington, DC

|   |  |
|---|--|
| <p style="text-align: right;">Page 146</p> <p>1 to the public.</p> <p>2 MR. TOONE: That's all I have.</p> <p>3 MS. LEVINE: Okay. No more at this</p> <p>4 time.</p> <p>5 MR. TOONE: Thank you very much.</p> <p>6 THE WITNESS: You're welcome.</p> <p>7 THE VIDEO OPERATOR: The time is</p> <p>8 3:20 p.m. This concludes the videotape deposition</p> <p>9 of Mr. Stephen Berardi.</p> <p>10</p> <p>11 (Deposition concluded at 3:20 p.m.)</p> <p>12</p> <p>13</p> <p>14</p> <p>15</p> <p>16</p> <p>17</p> <p>18</p> <p>19</p> <p>20</p> <p>21</p> <p>22</p>   | <p style="text-align: right;">Page 148</p> <p>1 CERTIFICATE OF STENOTYPE REPORTER - NOTARY PUBLIC</p> <p>2 I, Okeemah S. Henderson, Professional</p> <p>3 Shorthand Reporter, the officer before whom the</p> <p>4 foregoing deposition was taken, do hereby certify</p> <p>5 that the witness named herein was duly sworn by</p> <p>6 me; that the foregoing transcript is a true,</p> <p>7 correct, and complete record of the testimony</p> <p>8 given; that said testimony was taken by me</p> <p>9 stenographically and thereafter reduced to</p> <p>10 typewriting by me; and that I am neither counsel</p> <p>11 for, related to, nor employed by any of the</p> <p>12 parties to this litigation and have no interest,</p> <p>13 financial or otherwise, in its outcome.</p> <p>14 IN WITNESS WHEREOF, I have hereunto set my</p> <p>15 hand and affixed my notarial seal.</p> <p>16</p> <p>17</p> <p>18</p> <p>19 Okeemah S. Henderson, LSR</p> <p>20 Notary Public in and</p> <p>21 for the District of Columbia</p> <p>22 My Commission expires February 28, 2010</p> |
| <p style="text-align: right;">Page 147</p> <p>1 ACKNOWLEDGMENT OF DEPONENT</p> <p>2 I, STEPHEN BERARDI, do hereby acknowledge</p> <p>3 that I have read and examined the foregoing pages</p> <p>4 of testimony, and the same is a true, correct and</p> <p>5 complete transcription of the testimony given by</p> <p>6 me, and any changes and/or corrections appear on</p> <p>7 the attached errata sheet signed by me.</p> <p>8</p> <p>9</p> <p>10</p> <p>11</p> <p>12 (Date) STEPHEN BERARDI</p> <p>13</p> <p>14</p> <p>15</p> <p>16</p> <p>17</p> <p>18</p> <p>19</p> <p>20</p> <p>21</p> <p>22</p> |  |

38 (Pages 146 to 148)

## **Exhibit O**

**Cited Excerpts and Corresponding Exhibit from  
the Deposition of Brian Roseboro  
(June 27, 2006)**

New York, NY

Page 1

1

2 UNITED STATES DISTRICT COURT

3 FOR THE DISTRICT OF MASSACHUSETTS

4 -----X

5 UNITED STATES SECURITIES AND

6 EXCHANGE COMMISSION,

7 Plaintiff,

8 - against -

9 STEVEN E. NORTHERN,

10 Defendant.

11 CIVIL ACTION NO.: 05-10983(NMG)

12 -----X

13 450 Lexington Avenue  
14 New York, New York

15 June 27, 2006  
16 2:06 p.m.

17 VIDEOTAPED DEPOSITION of BRIAN

18 ROSEBORO, pursuant to Notice, before Melissa

19 Gilmore, a Notary Public of the State of New

20 York.

21

22

23

24

25

New York, NY

| Page 58   | Page 60   |
|---|---|
| <p>1 MR. SHOPE: I got a note that they<br/>2 are going to need to change the tape on<br/>3 the video, so why don't we take a short<br/>4 break right now.<br/>5 THE WITNESS: Very short, please.<br/>6 THE VIDEOGRAPHER: The time is 3:02.<br/>7 This ends tape number one of the<br/>8 videotaped deposition of Brian Roseboro.<br/>9 (Recess taken.)<br/>10 THE VIDEOGRAPHER: The time is 3:09.<br/>11 This begins tape number two of the<br/>12 videotaped deposition of Brian Roseboro.<br/>13 MR. ROSSETTI: I just note for the<br/>14 record that this is John Rossetti, counsel<br/>15 for the plaintiff, Securities and Exchange<br/>16 Commission. I arrived roughly ten minutes<br/>17 after you started.<br/>18 Q. Mr. Roseboro, we have had just a<br/>19 short break so that the videographer could<br/>20 change the videotape. Has that break given you<br/>21 a chance to think about any of your testimony?<br/>22 Do you want to correct or amplify anything you<br/>23 have said so far?<br/>24 A. No.<br/>25 Q. Now, is there such a thing as</p> | <p>1 Advisory Committee?<br/>2 A. No. Oh, let me qualify that.<br/>3 Definitely not in the October attended<br/>4 meetings. I don't recall whether or not it was<br/>5 mentioned at the July meetings, but it was not<br/>6 an issue that Treasury brought to the<br/>7 committee. It could be somebody brought it up<br/>8 and they indicated it in the minutes, for<br/>9 example, at the July meeting.<br/>10 MR. SHOPE: Why don't we mark this<br/>11 as the next exhibit -- the first exhibit,<br/>12 rather.<br/>13 (Roseboro Exhibit 1, Minutes of<br/>14 Meeting of Treasury Borrowing Advisory<br/>15 Committee, 7/31/01, marked for<br/>16 identification.)<br/>17 Q. I'm showing you what has been marked<br/>18 as Exhibit 1 to your deposition, Mr. Roseboro,<br/>19 and I recognize that it doesn't have the charge<br/>20 and so forth, but perhaps you could just take a<br/>21 look at that, and, first of all, do you<br/>22 recognize Exhibit 1 at all?<br/>23 A. Yes.<br/>24 Q. What do you recognize it to be?<br/>25 A. The Minutes of the Meeting of the</p>   |
| Page 59   | Page 61   |
| <p>1 Borrowing Advisory Committee?<br/>2 A. Yes.<br/>3 Q. What is the Borrowing Advisory<br/>4 Committee?<br/>5 A. A group of private sector<br/>6 individuals who come down ahead of the<br/>7 Treasury's quarterly refunding to offer advice<br/>8 to questions that the Treasury puts before it<br/>9 on debt management matters.<br/>10 Q. I take it this is a group of people<br/>11 in the private sector who are essentially<br/>12 self-selecting?<br/>13 MS. WILLIAMS: Objection.<br/>14 A. Yes.<br/>15 Q. Would it be fair to say that this<br/>16 group meets both publicly and privately in the<br/>17 day that precedes the day of the quarterly<br/>18 refunding conference?<br/>19 MS. WILLIAMS: Objection.<br/>20 A. Correct.<br/>21 Q. Did you attend meetings of the<br/>22 Borrowing Advisory Committee?<br/>23 A. Yes.<br/>24 Q. Did you ever discuss possible<br/>25 elimination of the long bond with the Borrowing</p>   | <p>1 Treasury Borrowing Advisory Committee of the<br/>2 Bond Market Association, July 31, 2001.<br/>3 Q. Was this a document that you would<br/>4 have seen prior to today's deposition at some<br/>5 point? In other words, you would have seen<br/>6 this back in July or August?<br/>7 A. Yeah, I would have saw this document<br/>8 back in July, August '01.<br/>9 Q. Would Mr. Malvey -- this was a<br/>10 document that was prepared by Mr. Malvey,<br/>11 correct?<br/>12 MS. WILLIAMS: Objection.<br/>13 A. That I don't recall exactly. There<br/>14 were minutes that were prepared -- there was a<br/>15 statement prepared by the Treasury Borrowing<br/>16 Advisory Committee, and there were minutes. So<br/>17 the nuance of their statement versus the<br/>18 minutes -- so I don't exactly recall the<br/>19 technical operational aspect of it, but<br/>20 Treasury would have been involved in the<br/>21 approval of the minutes before the Borrowing<br/>22 Advisory Committee put them out though.<br/>23 Q. So you -- just so I'm clear, would<br/>24 you have seen a draft of the minutes prior to<br/>25 the posting of those minutes on the Treasury</p> |

16 (Pages 58 to 61)

1 web site?  
 2 A. Correct.  
 3 Q. So, in other words, if you had had  
 4 some edit to a draft that was being prepared,  
 5 you would have had a chance to make that to it  
 6 before the document went public?  
 7 A. Correct.  
 8 Q. Does looking at Exhibit 1 at all  
 9 refresh your recollection as to whether or not  
 10 possible elimination of the long bond was  
 11 discussed by the Borrowing Advisory Committee?  
 12 A. I haven't read it.  
 13 Q. Perhaps I can help you if I draw  
 14 your attention to the second page, SM-000116.  
 15 A. (Perusing.) Okay.  
 16 Q. Do you see the first full paragraph  
 17 on the second page there?  
 18 A. Yes.  
 19 Q. It says, "The Committee debated  
 20 whether to comment further on continued  
 21 issuance of the 30-year bond," and then  
 22 different people had different views. Do you  
 23 see that?  
 24 A. Yes.  
 25 Q. Does that at all refresh your

1 recollection?  
 2 A. No.  
 3 Q. But does that suggest to you that  
 4 elimination of the long bond was, in fact,  
 5 discussed at a meeting of the Borrowing  
 6 Advisory Committee?  
 7 A. To this extent, yes.  
 8 Q. It says, by the way, "comment  
 9 further". Does that suggest to you that, in  
 10 fact, the Borrowing Advisory Committee had  
 11 discussed possible elimination of the long bond  
 12 on earlier occasions?  
 13 MS. WILLIAMS: Objection.  
 14 A. Again, as I indicated earlier, I had  
 15 been made aware that this was discussed earlier  
 16 in the previous administration.  
 17 Q. You said that you were quite sure  
 18 that the possible elimination of the long bond  
 19 was not discussed on the meeting -- at the  
 20 meeting of the Borrowing Advisory Committee on  
 21 October 30, 2001. Did I hear that rightly?  
 22 A. Yes, that's what I recall. We did  
 23 not discuss it with them on the 31st.  
 24 Q. First of all, are you, in fact,  
 25 confident in that memory?

1 A. In that, to the best of my  
 2 recollection, that's my memory.  
 3 Q. Is there any particular reason why  
 4 you are pretty sure it wasn't discussed then,  
 5 even though apparently it was discussed at the  
 6 previous meeting?  
 7 A. Because by the time of the meeting,  
 8 which is the day before the quarterly  
 9 refunding, the decision had been made.  
 10 Q. So in your view there would have  
 11 been no point to discussing that point?  
 12 A. Exactly.  
 13 Q. Was the decision to suspend issuance  
 14 of the long bond announced internally at  
 15 Treasury? I mean not necessarily every person  
 16 in the building including the janitor, but to  
 17 some subset of Treasury personnel.  
 18 MS. WILLIAMS: Objection.  
 19 A. No, it was not announced internally  
 20 prior to the quarterly refunding announcement.  
 21 Q. Let me just break that down.  
 22 Was Mr. Malvey aware before the  
 23 quarterly refunding conference that a decision  
 24 had been taken to suspend elimination of the  
 25 long bond?

1 MS. WILLIAMS: Objection.  
 2 A. Yes.  
 3 Q. So he had been told, right?  
 4 A. He -- again, he worked on the  
 5 quarterly refunding Statement that, to the best  
 6 of my recollection, he would have been involved  
 7 in the editing process of the quarterly  
 8 refunding Statement, which would have stated  
 9 it.  
 10 Q. So he -- in that capacity he would  
 11 have learned that the decision had been made?  
 12 MS. WILLIAMS: Objection.  
 13 A. Exactly.  
 14 Q. Who else worked on the drafting of  
 15 the statement for the press conference that  
 16 included the announcement that the long bond  
 17 was no longer going to be issued?  
 18 A. Myself, Peter Fisher.  
 19 Q. That's it?  
 20 A. To the best of my recollection.  
 21 Q. So was there anybody else in the  
 22 Treasury Department other than Secretary O'Nea  
 23 himself?  
 24 A. By that time, Tim Bitsberger was on  
 25 staff, so he would have known. I don't know

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DAVIS CAPITAL INV

PAGE 12

**MINUTES OF THE MEETING OF THE  
TREASURY BORROWING ADVISORY COMMITTEE  
OF THE BOND MARKET ASSOCIATION  
July 31, 2001**

The Committee convened at 9:00 a.m. at the Treasury Department for the portion of the meeting that was open to the public. All members were present except Messrs. Stark and White. The Federal Register announcement of the meeting and a list of Committee members are attached.

The Committee was welcomed by Brian Roseboro, Assistant Secretary for Financial Markets. Karen Hendershot, Acting Director of the Office of Macroeconomic Analysis, summarized the current state of the U.S. economy (statement attached). Paul Malvey, Director of the Office of Market Finance, presented the chart show, updating Treasury borrowing estimates, and debt and interest rate statistics.

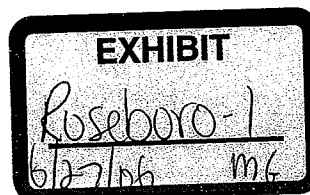
The public meeting ended at 9:22 a.m.

The Committee reconvened in closed session at the Madison Hotel at 12:05 p.m. All members were present except Messrs. Stark and White. The Chairman read the charge to the Committee, which is also attached.

The Committee began by discussing any special considerations that should be taken into account in distributing Treasury's financing needs given economic and policy uncertainties. The general view of the Committee was that there is no need to change long-term financing at this time. Underlying this view, the Committee viewed upcoming releases of the updates to the Administration's and Congressional Budget Office's long-term projections as important considerations for planning long-term financing. In addition, the Committee noted that possible recommendations to change the Social Security system would influence long-term financing decisions.

The Committee recognized the effect that the current increase in bill issuance is having on average maturity and debt financing costs, but both factors were considered favorable to Treasury. Increased bill issuance is helping to keep the average maturity of debt from rising and the market has the capacity to absorb increased bill issuance at historically favorable rates. The Committee suggested fairly stable issuance of the new 4-week bill until performance of the bill can be ascertained. Given 4-week bill issuance, however, the Committee does not see the need for issuance of Cash Management bills this fiscal quarter. Aside from increased bill issuance, the Committee's projections suggested modest increases in 2-year notes since there are no end-of-month 5-year notes maturing in July 2003.

On the question of increasing the size of initial auctions while reducing the size of reopenings, the Committee, while generally in favor of the proposal, was hesitant to recommend changes to the current issuance pattern. Some members of the Committee were concerned that a larger-initial / smaller-reopening policy would lead to insufficiently large reopenings, although it



SM-000115

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DAVIS CAPITAL INV

PAGE 13

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was also pointed out that the larger impact of issuance really depended on the total amount of a security issued rather than the amount of any single opening or reopening.

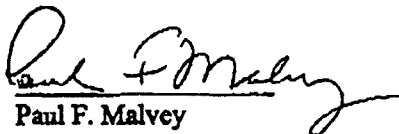
The Committee debated whether to comment further on continued issuance of the 30-year bond. Some members of the Committee said that the market expects Treasury to make a statement on the 30-year bond, while others said that Treasury should keep its options given increased policy and economic uncertainty. Others suggested that Treasury should develop a framework for assessing the "public good" value of the 30-year bond before deciding on its fate.

The Committee next reviewed its position on the 35 percent rule given the alternatives Treasury laid out last week in its Advanced Notice of Proposed Rulemaking (ANPR). While there was some support for the first option, which is listed in the ANPR as Treasury's preferred option, the Committee reiterated its previous position as contained in the May Committee Report to the Secretary. This position is to redefine the NLP to include only the when-issued position when calculating the 35 percent limit on a reopening – an option which the Committee views as easy to comply with and consistent with the objective of ensuring wide distribution at auctions. The Committee also reiterated its support for making the reporting time of net long positions simultaneous with the submission of bids.

The meeting adjourned at 12:58 p.m.

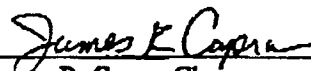
The Committee reconvened at the Madison Hotel at 6:00 p.m. All members were present except Messrs. Stark and White. The Chairman presented the Committee report to the Assistant Secretary for Financial Markets, Brian Roseboro. A brief discussion followed the Chairman's presentation, but did not raise significant questions regarding the report's content.

The meeting adjourned at 6:15 p.m.



Paul F. Malvey  
Director  
Office of Market Finance  
July 31, 2001

Certified by:



James R. Capra, Chairman  
Treasury Borrowing Advisory Committee  
of The Bond Market Association  
July 31, 2001

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SM-000116

SECNOTH00112871

## **Exhibit P**

**Cited Excerpts from the Deposition of Jill Cetina  
(February 8, 2008)**

Jill Cetina

February 8, 2008

Washington, DC

Page 1

1 UNITED STATES DISTRICT COURT  
2 FOR THE DISTRICT OF MASSACHUSETTS  
3 - - - - - X  
4 UNITED STATES SECURITIES AND :  
EXCHANGE COMMISSION, :  
5 :  
Plaintiffs, :  
6 :  
v. : Civil Action No.  
7 :  
STEVEN E. NOTHERN, : 05-10983 (NMG)  
8 :  
Defendant. :  
9 - - - - - X

10

11 Videotaped Deposition of JILL CETINA

12 Washington, D.C.

13 Friday, February 8, 2008

14 9:56 a.m.

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21 Reported by: Okeemah S. Henderson, LSR

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| Page 50  | Page 52  |
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| <p>1 however, was that they had been buying the 30 year<br/>2 that morning prior to 10 a.m.<br/>3 BY MR. SHOPE:<br/>4 Q. Well --<br/>5 A. Which with the inference being that he<br/>6 had some concern about the source of their<br/>7 information and why they were engaging in those<br/>8 trades. I think he was also trying to be careful<br/>9 in what he said to me and how he said it.<br/>10 Q. But the implication was that the<br/>11 reason that Goldman Sachs and Lehman were buying<br/>12 so heavily was that they had some knowledge?<br/>13 A. That they must have known that they<br/>14 had preknowledge.<br/>15 MS. WILLIAMS: Objection.<br/>16 BY MR. SHOPE:<br/>17 Q. That would be the reason why he would<br/>18 be angry?<br/>19 A. Right.<br/>20 MR. FREEBORNE: Objection.<br/>21 MS. WILLIAMS: Objection.<br/>22 A. Again, as I indicated, you know, he</p>   | <p>1 approximately 20 something.<br/>2 BY MR. SHOPE:<br/>3 Q. And did you know of a Jack Malvey at<br/>4 Lehman Brothers?<br/>5 A. Yes. He's one of their fixed income,<br/>6 analyst is too low. I don't know what his title<br/>7 is but he's one of their senior fixed income<br/>8 strategists at Lehman. Yes.<br/>9 Q. So he would be someone at Lehman whose<br/>10 job would include strategizing about the 30-year<br/>11 bond?<br/>12 MS. WILLIAMS: Objection.<br/>13 A. I mean, my experience from reading his<br/>14 pieces is that he thinks about credit strategy<br/>15 which could include the treasury market, it could<br/>16 include other markets as well for Lehman Brothers.<br/>17 So anything relating to fixed income, i.e. bonds<br/>18 potentially.<br/>19 BY MR. SHOPE:<br/>20 Q. And were you aware that Jack Malvey at<br/>21 Lehman Brothers was related to Paul Malvey at the<br/>22 Treasury Department?</p> |
| Page 51  | Page 53  |
| <p>1 could have been angry because he got caught short<br/>2 but clearly he could have also been angry because,<br/>3 you know, if he felt that there was inside<br/>4 information or information being leaked.<br/>5 BY MR. SHOPE:<br/>6 Q. Do you know a Woody Jay?<br/>7 A. The name is familiar.<br/>8 Q. Are you aware that Woody Jay was a<br/>9 vice chair of borrowing advisory committee in<br/>10 2001?<br/>11 A. I may have been aware of it after the<br/>12 fact. At that time, I don't think I was.<br/>13 Q. At the time, was Woody Jay working for<br/>14 Lehman Brothers?<br/>15 A. I don't know.<br/>16 Q. Lehman Brothers was a major market<br/>17 participant with respect to treasury securities;<br/>18 is that fair to say?<br/>19 MS. WILLIAMS: Objection.<br/>20 A. Lehman Brothers was one of the New<br/>21 York Feds primary dealers in the treasury market,<br/>22 one of, I don't know how many at that time, but</p> | <p>1 MS. WILLIAMS: Objection.<br/>2 A. I wondered about that at the time. I<br/>3 learned that later.<br/>4 BY MR. SHOPE:<br/>5 Q. How did you learn that later?<br/>6 A. I asked someone. Not in 2001 but<br/>7 later. I don't know what year. It may have been<br/>8 when I moved in domestic finance.<br/>9 Q. So possibly like 2002?<br/>10 A. 2002 I wasn't in domestic finance. I<br/>11 don't think I moved until 2004.<br/>12 Q. Now, turning back to your interview<br/>13 notes --<br/>14 MR. FREEBORNE: I think that misstates<br/>15 the record about her notes.<br/>16 MR. SHOPE: Oh, I'm sorry. The notes<br/>17 of your interview. I apologize.<br/>18 BY MR. SHOPE:<br/>19 Q. There's reference to a meeting that<br/>20 you had with a Drew Matus?<br/>21 A. Drew Matus.<br/>22 Q. Or Matus. And he also was employed by</p>  |

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| <p style="text-align: right;">Page 54</p> <p>1 Lehman Brothers, correct?</p> <p>2 A. Correct.</p> <p>3 Q. Do you know whether he was working for</p> <p>4 Woody Jay at that time?</p> <p>5 A. They all worked at Lehman Brothers but</p> <p>6 I presume but it's really beyond my -- I don't</p> <p>7 understand. I didn't understand in 2001 what the</p> <p>8 reporting structure of Lehman Brothers was.</p> <p>9 Q. Sure. And when you met with Mr.</p> <p>10 Matus, he had just come from a meeting with Paul</p> <p>11 Malvey and Jeff Huther, correct?</p> <p>12 MS. WILLIAMS: Objection.</p> <p>13 A. I believe that was what he told me or</p> <p>14 that was my sense. And later when I was in debt</p> <p>15 management, I actually asked Jeff if he had met</p> <p>16 with Drew and if he and Paul had met with Drew and</p> <p>17 he confirmed that to me, he, being Jeff.</p> <p>18 BY MR. SHOPE:</p> <p>19 Q. Jeff Huther had confirmed that. Okay.</p> <p>20 And I see in the notes on page 4 it says at the</p> <p>21 top Drew --</p> <p>22 MR. FREEBORNE: Can you give her a</p> | <p style="text-align: right;">Page 56</p> <p>1 It was mostly just to discuss sort of big</p> <p>2 picture what was going on in the financial</p> <p>3 markets, particularly fixed income.</p> <p>4 Q. Mr. Matus in the past I gather had</p> <p>5 told you that he was kind of plugged in as far as</p> <p>6 what Treasury was going to be doing, correct?</p> <p>7 MS. WILLIAMS: Objection.</p> <p>8 A. I don't specifically recall that.</p> <p>9 That's what's written here in the notes. So.</p> <p>10 BY MR. SHOPE:</p> <p>11 Q. I'm sorry. You say it's written in</p> <p>12 the notes but you're just sitting here</p> <p>13 today you're --</p> <p>14 MR. FREEBORNE: I'm confused as to what</p> <p>15 the question is.</p> <p>16 BY MR. SHOPE:</p> <p>17 Q. Sure. Well, the question is does she</p> <p>18 recall Mr. Matus indicating that he was plugged</p> <p>19 into what Treasury would be doing on debt</p> <p>20 management?</p> <p>21 MR. FREEBORNE: When you say plugged</p> <p>22 in, what do you mean?</p>  |
| <p style="text-align: right;">Page 55</p> <p>1 second to catch up?</p> <p>2 MR. SHOPE: Certainly. "Drew said he</p> <p>3 was meeting with Paul Malvey, Jeff Huther of</p> <p>4 treasury -- he met with them before he met with</p> <p>5 her." So is that consistent with your memory?</p> <p>6 A. Yes.</p> <p>7 Q. At the meeting that you had -- first</p> <p>8 of all, what was the purpose of the meeting with</p> <p>9 Mr. Matus on -- first of all, that was on</p> <p>10 October 22nd; is that correct?</p> <p>11 A. Right.</p> <p>12 Q. And what was the purpose of the</p> <p>13 meeting with Mr. Matus on October --</p> <p>14 A. My meeting?</p> <p>15 Q. Yes.</p> <p>16 A. Drew was someone who I would speak to.</p> <p>17 He was a contact and one of my, he had many</p> <p>18 contacts in fixed income and foreign exchange</p> <p>19 markets, so somebody that I talked to from time to</p> <p>20 time. He had let me know that he was going to be</p> <p>21 in Treasury. He said how about we get together</p> <p>22 and talk. So that was what we did.</p>                       | <p style="text-align: right;">Page 57</p> <p>1 MR. SHOPE: I'm simply quoting from the</p> <p>2 notes of the interview.</p> <p>3 A. Drew always seemed very knowledgeable</p> <p>4 about the treasury market, but that -- I don't</p> <p>5 specifically remember that from that time. It's</p> <p>6 here in the notes from, you know, the interview</p> <p>7 with me. You just have to -- I'm not trying to be</p> <p>8 difficult. I just don't specifically recall that.</p> <p>9 BY MR. SHOPE:</p> <p>10 Q. But you have no reason to believe that</p> <p>11 you didn't say that; is that fair to say?</p> <p>12 MS. WILLIAMS: Objection.</p> <p>13 MR. FREEBORNE: You can answer. I</p> <p>14 mean, I don't think it's, there's no quotes around</p> <p>15 it. It could have very well been the person that</p> <p>16 took the notes, that's her interpretation of what</p> <p>17 was said or so I don't think that's a fair</p> <p>18 question.</p> <p>19 A. It's just so long ago, I don't</p> <p>20 remember that aspect of it.</p> <p>21 BY MR. SHOPE:</p> <p>22 Q. But you're saying Mr. Matus always</p> |

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| <p style="text-align: right;">Page 58</p> <p>1 appeared to be very knowledgeable; is that at<br/>2 least a fair summary?<br/>3 A. I think that's a fair summary.<br/>4 Q. Again, going to the notes in Ms.<br/>5 Kerner's subsequent memorandum, which we can<br/>6 review in a minute --<br/>7 A. So we're done with --<br/>8 Q. No. I think we're going to stick on<br/>9 the notes for a second. With regard to Mr. Matus,<br/>10 do you recall in the course of your meeting on the<br/>11 22nd he went on to suggest that Treasury would be<br/>12 eliminating 30-year bond?<br/>13 MS. WILLIAMS: Objection?<br/>14 A. I seem to recall him saying that, and<br/>15 I seem to recall being a bit taken aback by him<br/>16 saying that. I have some recollection of that, I<br/>17 don't fantastic, you know, what his precise<br/>18 sentence was, but I have some recollection of it.<br/>19 BY MR. SHOPE:<br/>20 Q. And why were you taken aback by that<br/>21 suggestion that Mr. Matus made about eliminating<br/>22 30-year bond?</p> | <p style="text-align: right;">Page 60</p> <p>1 Q. Under the heading treasuries, there is<br/>2 in Exhibit 5 there is an underline sentence that<br/>3 says, "Some analysts wondered whether Treasury<br/>4 might cancel buybacks and the long bond<br/>5 simultaneously to prevent long term rates from<br/>6 rising." Do you see that?<br/>7 A. Yes.<br/>8 Q. First of all, this Exhibit 5 is a<br/>9 document that you drafted, correct?<br/>10 A. Correct.<br/>11 Q. Does that sentence relate to your<br/>12 meeting with Mr. Matus?<br/>13 A. Yes. Because I would never -- 'm<br/>14 sorry to speak over you, but when we would write<br/>15 these type of reports, you were never supposed to<br/>16 identify the firms because this was disseminated<br/>17 very broadly within the Department.<br/>18 You typically did not identify the firms<br/>19 that or the people, the individuals that were<br/>20 articulating those views. So, I wouldn't have<br/>21 said Drew Matus said blah. I would have said some<br/>22 analyst.</p>                          |
| <p style="text-align: right;">Page 59</p> <p>1 A. Because it wasn't something that I<br/>2 heard other dealers talking about as an<br/>3 expectation that they had for treasury debt<br/>4 management; hence, it was an unusual view and thus<br/>5 I thought noteworthy.<br/>6 MR. SHOPE: I'd like to show you a<br/>7 document here.<br/>8 (Deposition Exhibit No. 5 was marked for<br/>9 identification.)<br/>10 BY MR. SHOPE:<br/>11 Q. I'm going to focus on the portion of<br/>12 this memorandum that's under the heading<br/>13 treasuries?<br/>14 A. Yes.<br/>15 MR. FREEBORNE: Is the underlining in<br/>16 the original or is that somebody else's?<br/>17 MR. SHOPE: That's as it was produced<br/>18 to us by the Government. Just let me know when<br/>19 you're ready. I'm not going to ask you any<br/>20 questions about the indices on the right.<br/>21 THE WITNESS: Okay.<br/>22 BY MR. SHOPE:</p>  | <p style="text-align: right;">Page 61</p> <p>1 Q. And so when it says analysts in the<br/>2 plural, they're actually, for the reason you just<br/>3 mentioned, there really weren't multiple analysts,<br/>4 it was just Mr. Matus at Lehman Brothers?<br/>5 MS. WILLIAMS: Objection.<br/>6 A. That I was aware of. I can't speak to<br/>7 was there anybody in the market analyzing the<br/>8 treasury market but at that moment in time the<br/>9 person -- I only had one person in mind and that<br/>10 was Lehman Brothers. Drew at Lehman.<br/>11 BY MR. SHOPE:<br/>12 Q. Sure. And when you, I guess eight<br/>13 days after you prepared this report, we had the<br/>14 events of October 31, 2001, correct?<br/>15 A. Yes.<br/>16 Q. And there was obviously a lot of<br/>17 controversy about allegations that some people<br/>18 knew about the decision to cancel the long bond<br/>19 before other people did, correct?<br/>20 MS. WILLIAMS: Objection.<br/>21 A. I'm sorry. Can you -- whenever<br/>22 there's an objection. I get a little confused.</p> |

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| <p style="text-align: right;">Page 74</p> <p>1 a Norm Carlton the night before October 31?</p> <p>2 A. It wasn't a phone call. I believe</p> <p>3 Norm came by and just we were talking.</p> <p>4 Q. And did he tell you that there might</p> <p>5 be a market-moving event the next day?</p> <p>6 A. I recall having some conversation with</p> <p>7 Norm in advance of the announcement that gave me</p> <p>8 some sense that the 30 year might be, that</p> <p>9 something was up, let's put that it way.</p> <p>10 Q. So he did give you an indication to</p> <p>11 you that night before that the 30 year might be</p> <p>12 eliminated?</p> <p>13 MS. WILLIAMS: Objection.</p> <p>14 Q. Or I said the night before. Is it</p> <p>15 really the night?</p> <p>16 MS. WILLIAMS: Objection.</p> <p>17 A. I mean, during the afternoon of work</p> <p>18 hours, you know, that afternoon prior that Norm</p> <p>19 made some comment to me implying that there would</p> <p>20 be something significant out of the quarterly</p> <p>21 refunded.</p> <p>22 BY MR. SHOPE:</p>  | <p style="text-align: right;">Page 76</p> <p>1 which I appreciated because it helped me do my job</p> <p>2 better.</p> <p>3 Q. Did you go in extra early?</p> <p>4 A. Well, I mean, I don't know on that</p> <p>5 particular day, but we had rotations and if you</p> <p>6 were the morning person on the rotation, you could</p> <p>7 be in as early as 5:30 in the morning. So it may</p> <p>8 be that I went in extra early that day. Well, not</p> <p>9 extra, extra early, but early.</p> <p>10 Q. I believe there is reference in the</p> <p>11 notes to your actually having been in at 5:30 that</p> <p>12 morning?</p> <p>13 A. Uh-huh. It's quite possible. The day</p> <p>14 we did a foreign currency intervention, I was</p> <p>15 there at 4 in the morning, so.</p> <p>16 Q. You mentioned earlier that you had</p> <p>17 been interviewed in connection with the events of</p> <p>18 October 31 by various individuals?</p> <p>19 A. Yes.</p> <p>20 MR. SHOPE: Maybe if we can mark this</p> <p>21 as the next exhibit, that will help.</p> <p>22</p> |
| <p style="text-align: right;">Page 75</p> <p>1 Q. Do you recall anything else about the</p> <p>2 conversation?</p> <p>3 A. I do think he may have even gone so</p> <p>4 far as to explicitly say that he thought the</p> <p>5 30 year might have been eliminated to me.</p> <p>6 Q. What was Mr. Carlton's position?</p> <p>7 A. He was the director of another group</p> <p>8 in domestic finance, not the Office of Federal</p> <p>9 Finance. I don't specifically recall the name of</p> <p>10 that, again, there's been reorganizations, so I</p> <p>11 don't recall at that time what that group was</p> <p>12 called.</p> <p>13 I do know that his group was involved in the</p> <p>14 pricings of the savings bonds and hence, they</p> <p>15 probably would have been aware from that point of</p> <p>16 view of these discussions at some level.</p> <p>17 Q. What did you understand to be the</p> <p>18 purpose of Mr. Carlton's having come by to give</p> <p>19 you that information?</p> <p>20 A. So that as things unfolded in the</p> <p>21 morning, I would be extra aware to kind of have my</p> <p>22 eyes and ears looking for things the next morning,</p> | <p style="text-align: right;">Page 77</p> <p>1 (Deposition Exhibit No. 7 was marked for</p> <p>2 identification.)</p> <p>3 BY MR. SHOPE:</p> <p>4 Q. Do you recognize Exhibit 7?</p> <p>5 A. Yes.</p> <p>6 Q. Is that one of the documents that you</p> <p>7 reviewed yesterday?</p> <p>8 A. Uh-huh.</p> <p>9 Q. Had you seen it before yesterday?</p> <p>10 A. No. I didn't even see it yesterday.</p> <p>11 Q. Oh, you didn't see it?</p> <p>12 A. I have never seen this document</p> <p>13 before.</p> <p>14 Q. Oh, okay. Why don't you then take a</p> <p>15 moment to read it.</p> <p>16 A. (The witness complies.) Okay.</p> <p>17 Q. So this confirms that you actually did</p> <p>18 come to work at 5:30 that morning?</p> <p>19 A. Okay. So.</p> <p>20 Q. It indicates that you first noticed</p> <p>21 price increases on the long bond at 9:35 a.m. Do</p> <p>22 you see that?</p>   |

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| <p style="text-align: right;">Page 78</p> <p>1 A. Okay.</p> <p>2 Q. Is that consistent with your own</p> <p>3 memory?</p> <p>4 A. You know, we're talking about interday</p> <p>5 movements on a security that happened seven years</p> <p>6 ago. So I remember, my recollection is that I</p> <p>7 thought there were price increases say half an</p> <p>8 hour at least before the 10 a.m. announcement</p> <p>9 window.</p> <p>10 MR. SHOPE: And would it be -- if I</p> <p>11 have another document here which we can mark as</p> <p>12 the next exhibit?</p> <p>13 (Deposition Exhibit No. 8 was marked for</p> <p>14 identification.)</p> <p>15 BY MR. SHOPE:</p> <p>16 Q. Exhibit 8 is a memorandum from</p> <p>17 Francine Kerner. First of all, do you recall</p> <p>18 meeting with Francine Kerner in connection with</p> <p>19 the events of October 31, 2001?</p> <p>20 A. Vaguely. Yes. I mean, I have a</p> <p>21 memory that I met with a woman in the general</p> <p>22 counsel's office. If you tell me her name is</p>  | <p style="text-align: right;">Page 80</p> <p>1 A. He was a coworker in that group,</p> <p>2 though he actually worked -- he was actually an</p> <p>3 employee of Domestic Finance. So we were in the</p> <p>4 same group but had different reporting chains in</p> <p>5 effect.</p> <p>6 Q. Was his view the same as yours, i.e.</p> <p>7 that is, that people were trading on the decision</p> <p>8 to suspend the long bond to about a half hour</p> <p>9 beforehand?</p> <p>10 MS. WILLIAMS: Objection.</p> <p>11 A. I think you would have to ask him</p> <p>12 that. I recall Jim and I had some discussions</p> <p>13 about it, but I can't say for a fact that he had</p> <p>14 the exact same view as myself.</p> <p>15 BY MR. SHOPE:</p> <p>16 Q. Well, sitting here today, do you</p> <p>17 recall his having a different opinion?</p> <p>18 MS. WILLIAMS: Objection.</p> <p>19 A. No.</p> <p>20 BY MR. SHOPE:</p> <p>21 Q. Okay. If we look back to the</p> <p>22 interview notes which are Exhibit 2. On page 3 of</p>  |
| <p style="text-align: right;">Page 79</p> <p>1 Francine Kerner, then I guess that's right.</p> <p>2 Q. Just to continue to keep things moving</p> <p>3 along, I want to take you to the fourth paragraph</p> <p>4 of Ms. Kerner's memorandum and the first sentence</p> <p>5 says, "Based on their analysis of the trading data</p> <p>6 and information they received from the trading</p> <p>7 community, Jill Cetina and Jim Sharer, analyst in</p> <p>8 Treasury's market room, believe that one or more</p> <p>9 parties were trading on the basis of advance</p> <p>10 information." Do you see that?</p> <p>11 A. Mm-hmm.</p> <p>12 Q. So was that, in fact, your belief at</p> <p>13 the time that the price started going up about a</p> <p>14 half hour before the 10 o'clock, you know,</p> <p>15 announcement time and that that was in your view</p> <p>16 based on the advance knowledge of 30-year bond</p> <p>17 decision?</p> <p>18 MS. WILLIAMS: Objection.</p> <p>19 A. I believe that was my view. I had</p> <p>20 concerns. Yes.</p> <p>21 BY MR. SHOPE:</p> <p>22 Q. Who was Mr. Sharer?</p> | <p style="text-align: right;">Page 81</p> <p>1 the interview notes about a third of the way down</p> <p>2 there's a reference to MCM currency watch</p> <p>3 9:45 a.m. suspension. Didn't see it at 9:45 a.m.</p> <p>4 Do you see that?</p> <p>5 A. Yes.</p> <p>6 Q. Do you recall MCM currency watch</p> <p>7 having issued a report of the decision to suspend</p> <p>8 issuance of the long bond around quarter to 10 on</p> <p>9 the morning of October 31?</p> <p>10 A. I don't recall them. I don't remember</p> <p>11 this particular aspect of that. I mean, if it's</p> <p>12 here in the notes, presumably this is something</p> <p>13 that we discussed. Certainly, I'm aware, the MCM</p> <p>14 currency watch was something that we kept abreast</p> <p>15 of. They were kind of a rumory, gossipy news,</p> <p>16 they weren't news they were more like analysis</p> <p>17 service and so, you know, given that they put</p> <p>18 things out that sometimes were market moving, we</p> <p>19 tried to keep abreast of what they were saying.</p> <p>20 But I don't have a specific recollection of that</p> <p>21 aspect of the morning.</p> <p>22 Q. And now there's some indication that</p> |

## **Exhibit Q**

**Cited Excerpts from the Deposition of Brian Collins  
(May 12, 2006)**

Brian Collins

May 12, 2006

Washington, DC

Page 1

UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF MASSACHUSETTS

- - - - - X

UNITED STATES SECURITIES AND :

EXCHANGE COMMISSION, :

Plaintiff, :

V. : Civil Action No.

STEVEN E. NOTHERN, : 05-10983 (NMG)

Defendant. :

- - - - - X

Washington, D.C.

Friday, May 12, 2006

Videotape Deposition of BRIAN COLLINS, a  
witness herein, called for examination by counsel for  
the Defendant in the above-entitled matter, pursuant  
to notice and subpoena, the witness being duly sworn  
by PENNY M. DEAN, a Notary Public in and for the  
District of Columbia, taken at the law offices of  
Foley Hoag, LLP, 1875 K Street, NW, Washington, D.C.,  
at 10:44 a.m., Friday, May 12, 2006, and the  
proceedings being taken down by Stenotype by PENNY M.  
DEAN, RPR, and transcribed under her direction.

Alderson Reporting Company

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Washington, DC 20005

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Brian Collins

May 12, 2006

Washington, DC

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|---|---|
| <p>1 MS. WILLIAMS: Objection to that<br/>2 characterization. Go ahead.<br/>3 BY MR. SHOPE:<br/>4 Q. So again, before the press conference on<br/>5 October 31, you'd attended press conferences at a<br/>6 variety of other government agencies, true?<br/>7 A. Yes.<br/>8 Q. Now, at any of those other press<br/>9 conferences that you attended before October 31,<br/>10 2001, had the subject of press embargo ever come up?<br/>11 MR. RITTINGER: I'm sorry -- his bottle is<br/>12 blocking your face. We wouldn't want you not to<br/>13 be --<br/>14 THE WITNESS: Yes.<br/>15 MR. SHOPE: Okay, all right.<br/>16 BY MR. SHOPE:<br/>17 Q. How did it come up? In other words, can<br/>18 we go through some of the different conferences that<br/>19 you attended before October 31, 2001, and how a press<br/>20 embargo came up.<br/>21 MR. RITTINGER: In general, he's asking.<br/>22 BY MR. SHOPE:<br/>23 Q. In general, we'll break it down to<br/>24 specifics.<br/>25 A. Usually they say we don't want something</p>  | <p>1 relating to any quarterly refunding conference that<br/>2 you were attending at the Treasury Department?<br/>3 A. No.<br/>4 Q. Okay. And I take it nobody had ever asked<br/>5 you to sign anything in connection with any kind of<br/>6 press embargo, is that fair?<br/>7 A. That's my recollection, yeah, yes.<br/>8 Q. This is probably obvious, but -- and you<br/>9 never did sign anything, right?<br/>10 A. No.<br/>11 Q. Now, I want to turn now to October 31,<br/>12 2001. You made a statement earlier, and I just want<br/>13 to make sure I understand it. What's your best<br/>14 recollection as to why you attended the press<br/>15 conference on October 31, 2001?<br/>16 MR. RITTINGER: Well, I object to the form<br/>17 of the question. I also think it's -- the why is not<br/>18 relevant, and it may -- but you can answer that. You<br/>19 can answer without waiving anything beyond that.<br/>20 THE WITNESS: I knew they had a press<br/>21 conference that they were going to do, and I was -- I<br/>22 tried to get over there. I was actually late.<br/>23 MR. SHOPE: Okay.<br/>24 BY MR. SHOPE:<br/>25 Q. Do you recall at all how you learned about</p> |
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| <p>1 published before a certain time of the day, or a --<br/>2 or we're going to give this to you today, we don't<br/>3 want you publishing anything later.<br/>4 Q. Were you ever asked to sign anything that<br/>5 indicated that you would abide by a press embargo?<br/>6 A. No.<br/>7 Q. Did you ever go to any press conference<br/>8 where the agency actually locked you into the room up<br/>9 to a point in time when the embargo was expiring?<br/>10 A. I've heard of that. I don't think I have.<br/>11 I know when I go to the like National Association of<br/>12 Realtors, they release some information. And they<br/>13 keep us in the room until 10 o'clock, when it is<br/>14 officially released.<br/>15 Q. When you went to conferences at the<br/>16 Federal Reserve, were you -- was there ever any<br/>17 discussion of embargo that you can remember?<br/>18 A. No.<br/>19 Q. Can you remember any other agency where<br/>20 embargo has come up, press embargo, that is?<br/>21 A. No.<br/>22 Q. All right. Now, I want to focus on<br/>23 Treasury Department. And I apologize if we've<br/>24 covered this before. But before October 31, 2001,<br/>25 had anybody ever discussed with you a press embargo</p> | <p>1 the press conference?<br/>2 A. I don't remember.<br/>3 Q. Now -- and I apologize, I meant to address<br/>4 this earlier. When you had attended the quarterly<br/>5 refunding conferences before October 31, 2001, how<br/>6 did you get into the Treasury building?<br/>7 A. At one point, I had a Treasury press pass.<br/>8 At another point, I had -- I gave that up, I let that<br/>9 expire because I got a White House press pass and<br/>10 they would accept it. Let me interject one thing.<br/>11 Q. Sure.<br/>12 A. I really never covered the quarterly<br/>13 things on any type of regular basis.<br/>14 Q. Um-hum.<br/>15 A. It's just, you know -- it just wasn't my<br/>16 thing.<br/>17 Q. You mentioned that on October 31, 2001,<br/>18 there were a lot of people at the press conference.<br/>19 A. Um-hum.<br/>20 Q. Correct?<br/>21 A. Yes.<br/>22 Q. Had you attended quarterly refunding<br/>23 conferences where there were a lot fewer people than<br/>24 the number of people that you observed on October 31,<br/>25 2001?</p>   |

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1 A. To the best of my recollection, I think  
2 when I had been at Treasury at something that might  
3 be a quarterly thing or something, they usually just  
4 sat around a big table and talked to you.

5 Q. And was there any restriction on your  
6 ability to go into that conference room?

7 A. (No response.)

8 Q. I'm sorry, let me rephrase the question.

9 Did you need to have the -- a pass of the  
10 type that you mentioned before, either the Treasury  
11 press pass or the White House press pass in order to  
12 attend that?

13 A. Yes, that's one way you get into the  
14 building, or you can call up and just give them your  
15 -- in advance, you can give them your Social Security  
16 number, date of birth, and name, and news  
17 organization. And they will clear you through  
18 normally.

19 Q. Okay. Now, did you ever go to the  
20 Treasury Department to talk to people other than in  
21 connection with attending one of these conferences?

22 A. Yes.

23 Q. And did you also have to go through the  
24 clearance procedure to get into the building?

25 A. Yes.

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1 Q. Now, when you were going to the quarterly  
2 refunding conferences, where you were just sitting  
3 around the conference table, was there any physical  
4 restriction on your ability to leave during the  
5 middle of the conference, you know, if you needed to  
6 go to the bathroom or realized you had another  
7 appointment or anything like that?

8 A. I don't remember.

9 Q. In other words, you don't remember any  
10 kind of sergeant-at-arms or anything sort of, you  
11 know, keeping you in the room?

12 MS. WILLIAMS: Objection.

13 MR. RITTINGER: If you don't remember,  
14 just say you don't remember.

15 THE WITNESS: I don't remember.

16 MR. SHOPE: Okay.

17 MR. RITTINGER: Say what you remember  
18 obviously, but if you don't remember, say you don't  
19 remember. And it is apparent that you don't  
20 remember, so --

21 MR. SHOPE: Yeah.

22 BY MR. SHOPE:

23 Q. I'm not trying to torture you, Mr.  
24 Collins?

25 MR. RITTINGER: You got -- well, never

1 mind.

2 BY MR. SHOPE:

3 Q. I'm just trying to get as much as I can.

4 MR. RITTINGER: I know, but in all due  
5 respect, John, he is a witness here of certain  
6 relevant events. He's not an expert, and he's not --  
7 he shouldn't be deposed as an expert as to how you do  
8 or do not get into the Treasury Department. That's  
9 for other people. And I don't think you have the  
10 right to a third-party subpoena for that type of  
11 thing. We're giving you a lot of leeway, but --

12 MR. SHOPE: Well, I disagree with your  
13 statement.

14 MR. RITTINGER: Well, you may disagree  
15 with my statement, but let's move it on, okay?

16 MR. SHOPE: That's what I was going to  
17 say. I think it will go faster if we just don't make  
18 statements on the record.

19 MR. RITTINGER: Well, look, he is -- we're  
20 a third-party witness, we're here to testify about  
21 facts that you say are relevant to your defense. I  
22 don't think that you have the right to go over his  
23 entire experience in getting into press conferences.  
24 I really don't think that's appropriate. He's not  
25 here as an expert, he's here as a fact witness for a

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1 limited purpose.

2 BY MR. SHOPE:

3 Q. Mr. Collins, just so the record is clear,  
4 as far as -- you can't recall any physical  
5 restriction on your entry or exit into any of the  
6 quarterly refunding conferences that you attended at  
7 Treasury?

8 MR. RITTINGER: Asked and answered, asked  
9 and answered. You can answer it one more time.

10 MS. WILLIAMS: Objection.

11 MR. SHOPE: Would you like to have the  
12 reporter reread the question?

13 THE WITNESS: No.

14 BY MR. SHOPE:

15 Q. And your answer to the question is?

16 A. I don't remember anything like that.

17 Q. Thank you. Do you ever remember whether  
18 anybody who wasn't a newspaper reporter attended any  
19 of the quarterly refunding conferences that you also  
20 attended?

21 A. I don't know, I wouldn't know that.

22 Q. When you went to the quarterly refunding  
23 conferences, did anyone escort you from the entry  
24 into the Treasury building to the conference itself?

25 A. No.

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| <p>1 Q. Okay.</p> <p>2 A. Can we have a time out here for just a</p> <p>3 second?</p> <p>4 Q. Sure.</p> <p>5 A. I don't go to quarterly -- I mean, the</p> <p>6 RTC probably was -- this is a time out. You keep</p> <p>7 saying like I'm going there --</p> <p>8 MR. RITTINGER: Stay on the record.</p> <p>9 BY MR. SHOPE:</p> <p>10 Q. Okay, I see. What you're saying is there</p> <p>11 were only a few that you attended, so you just want</p> <p>12 to make that clear.</p> <p>13 A. Yes.</p> <p>14 Q. Okay, that's fine. And when you attended</p> <p>15 the conference on October 31, 2001, did anyone escort</p> <p>16 you from the front entrance of the Treasury building</p> <p>17 to the actual location of the press conference?</p> <p>18 A. No.</p> <p>19 Q. Do you remember whether the doors -- well,</p> <p>20 first of all, what do you remember about the room on</p> <p>21 that day, October 31, 2001, do you remember what kind</p> <p>22 of a room it was?</p> <p>23 A. It was a good sized room with some chairs</p> <p>24 and there was a lot of cameras.</p> <p>25 Q. Now, you mentioned that you came in late,</p>  | <p>1 or somebody else, or some combination of people?</p> <p>2 A. Um-hum.</p> <p>3 Q. You've got have to say yes.</p> <p>4 A. Yes.</p> <p>5 Q. And do you remember anything about what</p> <p>6 the questions were or what the substance was?</p> <p>7 A. No.</p> <p>8 MR. RITTINGER: Well, there's two</p> <p>9 questions there. And you may not remember the</p> <p>10 questions, but do you remember the substance? It was</p> <p>11 about the 30-year bond --</p> <p>12 THE WITNESS: Right.</p> <p>13 MR. SHOPE: I mean, I guess that's what I</p> <p>14 want to get at.</p> <p>15 BY MR. SHOPE:</p> <p>16 Q. You remember that it was generally about</p> <p>17 the suspension of the 30-year bond, right?</p> <p>18 A. Correct.</p> <p>19 Q. Do you remember anything beyond that about</p> <p>20 those topics of discussion and so forth?</p> <p>21 A. No.</p> <p>22 Q. And this is not trying to torture you, but</p> <p>23 just to see if this at all refreshes your</p> <p>24 recollection. I mean, do you remember any discussion</p> <p>25 about whether this was expected news or whether it</p>   |
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| <p>1 was there anybody -- were the doors still open so</p> <p>2 that you could come on in?</p> <p>3 A. Yes.</p> <p>4 Q. Did you stay for the entire duration of</p> <p>5 the press conference?</p> <p>6 MS. WILLIAMS: Objection.</p> <p>7 MR. RITTINGER: You can answer.</p> <p>8 THE WITNESS: I was late, and I stayed</p> <p>9 until they dismissed everybody.</p> <p>10 BY MR. SHOPE:</p> <p>11 Q. First of all, do you remember who was</p> <p>12 speaking that day?</p> <p>13 A. I would think it was Peter Fisher, he was</p> <p>14 the Treasury guy then.</p> <p>15 Q. And what do you remember about what</p> <p>16 Mr. Fisher said that day?</p> <p>17 A. I think I got there during the question</p> <p>18 and answer period. So I don't think I actually heard</p> <p>19 him speak directly.</p> <p>20 Q. And during the question and answer period,</p> <p>21 was anybody answering questions? I'm sorry, let me</p> <p>22 back up. Who was answering the questions during the</p> <p>23 question and answer period?</p> <p>24 A. I don't really -- I don't remember now.</p> <p>25 Q. You don't know whether it was Mr. Fisher</p> | <p>1 was a shock or whether this, you know --</p> <p>2 MS. WILLIAMS: Objection.</p> <p>3 BY MR. SHOPE:</p> <p>4 Q. In other words, do you recall any reaction</p> <p>5 amongst the participants or the people asking</p> <p>6 questions or any of the other reporters who were</p> <p>7 there that day?</p> <p>8 MS. WILLIAMS: Objection.</p> <p>9 MR. RITTINGER: What you recall.</p> <p>10 MR. SHOPE: Yeah, I'm just asking what you</p> <p>11 remember, Mr. Collins.</p> <p>12 THE WITNESS: By the time I got there,</p> <p>13 they already knew about it.</p> <p>14 MR. SHOPE: Okay.</p> <p>15 BY MR. SHOPE:</p> <p>16 Q. And did you -- okay. Do you remember --</p> <p>17 you mentioned that people were dismissed. Do you</p> <p>18 remember who did the dismissing? And this is by</p> <p>19 function, you might not know the person's name.</p> <p>20 A. I assume it was one of the press people.</p> <p>21 They said that concludes the press conference.</p> <p>22 Q. When you say one of the press people, are</p> <p>23 you talking about one of the --</p> <p>24 A. A press officer, a Treasury official.</p> <p>25 Q. And was there any discussion of or mention</p> |

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|--|---|
| <p>1 of -- on October 31, 2001, of a press embargo?</p> <p>2 A. Yes.</p> <p>3 Q. What was that?</p> <p>4 A. The press woman said that there is an</p> <p>5 embargo until 10 o'clock.</p> <p>6 Q. Okay. Was there any -- did anybody in the</p> <p>7 audience on October 31, 2001 respond to that comment</p> <p>8 at all?</p> <p>9 MS. WILLIAMS: Objection.</p> <p>10 THE WITNESS: I don't remember anybody.</p> <p>11 BY MR. SHOPE:</p> <p>12 Q. Okay. So as far as you can remember,</p> <p>13 there was nobody who asked for any kind of</p> <p>14 clarification about what that meant?</p> <p>15 A. No.</p> <p>16 Q. Now, had anybody ever stated to you what</p> <p>17 the purpose of the announced press embargo was?</p> <p>18 A. No.</p> <p>19 Q. With regard to the other federal agencies</p> <p>20 that have had press conferences and press embargoes,</p> <p>21 has there ever been any discussion of what the</p> <p>22 purpose of the press embargo was?</p> <p>23 A. I don't think so.</p> <p>24 Q. And just to be clear, you were never asked</p> <p>25 to sign anything about the press embargo on October</p> | <p>1 Q. And what -- did you receive any kind of a</p> <p>2 press announcement or press release on October 31,</p> <p>3 2001?</p> <p>4 A. I can't recall how I knew about it, but I</p> <p>5 mean, I look through a lot of stuff every day, every</p> <p>6 week and put a calendar together. And, you know, and</p> <p>7 maybe I went on their website and looked at it to see</p> <p>8 if there was something announced, or whatever. I</p> <p>9 can't remember now.</p> <p>10 Q. I'm sorry, what I'm asking you, Mr.</p> <p>11 Collins, is when you were at the press conference on</p> <p>12 October 31, 2001, was there anything that was handed</p> <p>13 out to you by way of a press release or something</p> <p>14 that you took?</p> <p>15 A. Oh, yes.</p> <p>16 Q. Now, when you were actually on the</p> <p>17 premises of the Treasury Department itself, did you</p> <p>18 talk to anybody else about the subject matter of the</p> <p>19 press conference?</p> <p>20 A. No.</p> <p>21 Q. And you had learned at the conference that</p> <p>22 the long bond was being suspended, right?</p> <p>23 A. Yes.</p> <p>24 Q. Did you take any action with regard to</p> <p>25 having learned that news once the conference was</p> |
| Page 47  | Page 49   |
| <p>1 31, 2001; is that fair?</p> <p>2 A. No.</p> <p>3 Q. And just so that I'm absolutely clear, you</p> <p>4 never discussed the embargo with any of the other</p> <p>5 reporters that were there that day; is that fair?</p> <p>6 MS. WILLIAMS: Objection.</p> <p>7 MR. RITTINGER: You can answer, if you</p> <p>8 recall.</p> <p>9 THE WITNESS: I don't remember.</p> <p>10 MR. RITTINGER: I honestly don't</p> <p>11 understand the objection, but I guess I don't have</p> <p>12 to, do I?</p> <p>13 MS. WILLIAMS: It's to the form of the</p> <p>14 question.</p> <p>15 MR. RITTINGER: Anyway.</p> <p>16 BY MR. SHOPE:</p> <p>17 Q. And again, just so I'm clear, there was</p> <p>18 nothing that physically prevented you from leaving</p> <p>19 the press conference before the period when the press</p> <p>20 officer said that it was over or that you were</p> <p>21 dismissed, right?</p> <p>22 MS. WILLIAMS: Objection.</p> <p>23 THE WITNESS: I wouldn't know if there</p> <p>24 was, I wasn't intending to leave until it was over.</p> <p>25 BY MR. SHOPE:</p>  | <p>1 over?</p> <p>2 A. I went back to my office, I sat down and I</p> <p>3 tried to write a story.</p> <p>4 Q. How far is your office from the Treasury</p> <p>5 Department, or how far was it on October 31, 2001?</p> <p>6 A. It's two blocks.</p> <p>7 Q. So how long would it take you to traverse</p> <p>8 the distance?</p> <p>9 MR. RITTINGER: Just your best estimate.</p> <p>10 BY MR. SHOPE:</p> <p>11 Q. Yeah, again, this is -- like I was saying</p> <p>12 before, just give me your best estimate if you don't</p> <p>13 know exactly.</p> <p>14 A. It can take probably seven to ten minutes</p> <p>15 depending how long if you catch a light or two.</p> <p>16 Q. I'm sorry, if you catch a --</p> <p>17 A. You have to cross some intersections.</p> <p>18 Q. Oh, I see.</p> <p>19 A. Like what is that? 15th Street, 14th</p> <p>20 Street.</p> <p>21 Q. Do you have any recollection as to when it</p> <p>22 was that the press conference ended?</p> <p>23 A. I would guess it was probably about 9:30.</p> <p>24 Q. And do you remember -- and I'm sorry, this</p> <p>25 may have been covered, but just so I'm clear, what's</p>   |

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| <p>1 your best memory of exactly what it was the press<br/>2 officer said about press embargo on October 31, 2001?<br/>3 A. My recollection is, "remember, there is an<br/>4 embargo until 10 o'clock."<br/>5 Q. So that would have been approximately a<br/>6 half hour time period between the conclusion of the<br/>7 press conference and the expiration of the embargo<br/>8 period, fair statement?<br/>9 A. Yes.<br/>10 Q. Was that half hour, how did that compare<br/>11 to any previous press embargoes to which you had been<br/>12 subjected in your service in Washington?<br/>13 A. Like I think I've said before, I haven't<br/>14 dealt with a lot of embargo type situations. And so<br/>15 just -- that's what it was.<br/>16 Q. In other words, you have no idea whether a<br/>17 half hour was longer or shorter, typical or atypical<br/>18 compared to other press embargoes to -- in which<br/>19 you've been involved?<br/>20 A. Right.<br/>21 Q. Now, you said that you tried to write a<br/>22 story about the news that you had learned at the<br/>23 conference, right?<br/>24 A. Right.<br/>25 Q. First of all, did you actually write a</p> | <p>1 Q. And before you did that, had anybody ever<br/>2 told you that that was something that you shouldn't<br/>3 be doing?<br/>4 A. No.<br/>5 Q. And do you remember the name of the person<br/>6 with whom you left the message?<br/>7 A. I believe it was Janice Smith.<br/>8 Q. And did you have a prior acquaintance with<br/>9 Janice Smith?<br/>10 A. Yes.<br/>11 Q. Just briefly, what was that?<br/>12 A. She has worked at other agencies that I've<br/>13 covered, and I've known her as a press officer for<br/>14 quite a few years.<br/>15 Q. Now, do you recall whether you spoke to<br/>16 Ms. Smith in -- live?<br/>17 A. I recall leaving a message on her<br/>18 voicemail.<br/>19 Q. And do you recall -- is it possible that<br/>20 you spoke to her live?<br/>21 A. I recall leaving a message.<br/>22 Q. Did -- what did you say in your message to<br/>23 the best as you can recall?<br/>24 A. I think I probably said something like,<br/>25 Treasury is doing something with a 30-year bond and</p>  |
| Page 51   | Page 53   |
| <p>1 story?<br/>2 A. Yeah, I did a blurb. We have a Daily<br/>3 Wire.<br/>4 Q. And did the blurb actually appear on the<br/>5 Daily Wire?<br/>6 A. Yes, it did.<br/>7 Q. And could you give me your best<br/>8 recollection as to how long the blurb was?<br/>9 A. It was probably about four sentences.<br/>10 Q. And did it have your -- did it have a<br/>11 byline?<br/>12 A. No.<br/>13 Q. And do you recall at all what the blurb<br/>14 said?<br/>15 A. It probably said Treasury Department is<br/>16 going to suspend 30-year bond, issuance of 30-year<br/>17 bond.<br/>18 Q. Did you make any effort to try to get any<br/>19 comment from anyone about the news that you had<br/>20 learned about the suspension of the long bond?<br/>21 A. Yes.<br/>22 Q. What did you do?<br/>23 A. I called Fannie Mae's press office and I<br/>24 left a message to -- that this happened, and I was<br/>25 hoping to get some comment.</p>  | <p>1 I'd like to get some comment from the company.<br/>2 Q. And the company being Fannie Mae?<br/>3 A. Um-hum.<br/>4 Q. You've got to say yes.<br/>5 A. Yes.<br/>6 Q. And did you get any response to that<br/>7 message?<br/>8 A. No.<br/>9 Q. After you had attended the conference on<br/>10 October 31, and before 10 o'clock, did you have any<br/>11 communication with anybody else about suspension of<br/>12 the long bond, you know, for example, your executive<br/>13 editor or anyone in the office?<br/>14 MS. WILLIAMS: Objection.<br/>15 THE WITNESS: I believe I did talk to Paul<br/>16 Muolo, my executive editor.<br/>17 MR. SHOPE: Okay, okay.<br/>18 BY MR. SHOPE:<br/>19 Q. And can you give me any recollection, in<br/>20 substance, of course, since it's been five years,<br/>21 about what you probably said to him and what he<br/>22 probably said to you, if anything?<br/>23 A. I probably just told him I just got back<br/>24 from the press conference, and this is what happened.<br/>25 Q. And had anybody ever told you that you</p> |

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| <p>1 Q. Do you recall whether the person to whom</p> <p>2 you spoke was Mr. Rossetti, who is here today?</p> <p>3 A. The name sounds familiar, but I can't -- I</p> <p>4 don't remember.</p> <p>5 Q. Do you remember whether it was a man or a</p> <p>6 woman with whom you spoke?</p> <p>7 A. I spoke with a man.</p> <p>8 Q. By the way, was it only one person with</p> <p>9 whom you spoke, or was it two people or more?</p> <p>10 A. I think there was two people on the -- on</p> <p>11 the phone.</p> <p>12 MR. RITTINGER: It's the SEC, it's got to</p> <p>13 be at least two. Sorry.</p> <p>14 BY MR. SHOPE:</p> <p>15 Q. So -- and how long did the conversation</p> <p>16 occur, do you remember?</p> <p>17 A. I don't remember.</p> <p>18 Q. Can you give me an estimate? In other</p> <p>19 words, was it something where you had to spend half a</p> <p>20 day on it, or was it just like a 15 minute call or a</p> <p>21 half hour or an hour? Just any kind of parameters</p> <p>22 you can put on it.</p> <p>23 A. I would say maybe 20 minutes.</p> <p>24 Q. And to the best of your -- can you give me</p> <p>25 the best recollection you have about what was asked</p> | <p>1 A. I think it was before December 14th, but</p> <p>2 yeah, I received this after I spoke to them in the</p> <p>3 mail. I think it might have been certified or</p> <p>4 something, I can't remember now.</p> <p>5 Q. The -- well, Mr. Hathaway says, "thank you</p> <p>6 for speaking with the staff today."</p> <p>7 A. Um-hum.</p> <p>8 Q. You don't have any reason to believe that</p> <p>9 that was an incorrect statement?</p> <p>10 A. Oh, no.</p> <p>11 Q. And did you -- have you attended any</p> <p>12 Treasury conferences, press conferences, refunding</p> <p>13 conferences, conferences of any kind after October</p> <p>14 31, 2001?</p> <p>15 A. I probably have.</p> <p>16 Q. And did anyone from the Treasury</p> <p>17 Department ever say that your ability or right to</p> <p>18 attend press conferences was going to be restricted</p> <p>19 or diminished in any way?</p> <p>20 A. No, no one ever said anything.</p> <p>21 Q. Did anyone from the Treasury Department</p> <p>22 ever tell you that -- or anyone from anywhere ever</p> <p>23 tell you that -- I'm sorry, I'm tired today.</p> <p>24 Did anyone within the government ever tell</p> <p>25 you that your ability to -- whether you were going to</p> |
| Page 59  | Page 61  |
| <p>1 and what you -- in other words, what was the</p> <p>2 conversation that you had with the SEC?</p> <p>3 A. They basically asked me about my call to</p> <p>4 Fannie Mae.</p> <p>5 Q. And did you tell them what you've told us</p> <p>6 here today?</p> <p>7 A. I told them that, yes, I had made a call</p> <p>8 to Fannie Mae, just like I told you.</p> <p>9 Q. Did you tell them anything different from</p> <p>10 what you have said today as far as you can recall?</p> <p>11 A. I don't think so.</p> <p>12 Q. And mark that as the next exhibit.</p> <p>13 (Exhibit No. 2 was marked for</p> <p>14 identification.)</p> <p>15 MR. SHOPE:</p> <p>16 Q. Mr. Collins, I'm showing you what's been</p> <p>17 marked as Exhibit 2 to your deposition; do you see</p> <p>18 that?</p> <p>19 A. Yes.</p> <p>20 Q. Is this a -- do you recall having received</p> <p>21 Exhibit 2?</p> <p>22 A. Yes, I do.</p> <p>23 Q. So is this -- in other words, does this</p> <p>24 suggest to you that you did, in fact, speak with the</p> <p>25 SEC staff on December 14th, 2001?</p>   | <p>1 be punished in any way for the events of October 31,</p> <p>2 2001?</p> <p>3 A. I have not.</p> <p>4 Q. And just so I'm clear, as far as you're</p> <p>5 aware, the SEC never conducted any investigation of</p> <p>6 your conduct apart from simply having interviewed you</p> <p>7 on or about December 14, 2001; is that correct?</p> <p>8 A. They interviewed me, they sent me this</p> <p>9 letter and that's the last I've heard of it.</p> <p>10 Q. Okay.</p> <p>11 A. Until I got a subpoena from you guys.</p> <p>12 Q. Did you ever hear of any change in the</p> <p>13 policy of the Treasury Department with regard to</p> <p>14 press embargoes after the events of October 31, 2001?</p> <p>15 A. No.</p> <p>16 Q. Have you ever -- have you written any</p> <p>17 stories about Treasury refunding conferences or press</p> <p>18 conferences or -- yeah, Treasury conferences of any</p> <p>19 kind after October 31, 2001?</p> <p>20 A. I'm sure I have, I can't -- I can't point</p> <p>21 to one right now.</p> <p>22 (Exhibit No. 3 was marked for</p> <p>23 identification.)</p> <p>24 BY MR. SHOPE:</p> <p>25 Q. Mr. Collins, we've passed to you what's</p>  |

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Brian Collins

May 12, 2006

Washington, DC

|   |   |
|---|---|
| <p style="text-align: right;">Page 66</p> <p>1 Q. I believe you testified before that you<br/>2 recalled receiving a press announcement hand out on<br/>3 October 31, 2001, correct?<br/>4 A. Yes.<br/>5 Q. As best you recall, is Exhibit 5 a copy of<br/>6 what you received on that date?<br/>7 A. It looks very much like it.<br/>8 (Exhibit No. 6 was marked for<br/>9 identification.)<br/>10 BY MR. SHOPE:<br/>11 Q. And just to save time, Mr. Collins, you're<br/>12 welcome to read the entire Exhibit 6, but I'm going<br/>13 to be asking you about the bottom paragraph on the<br/>14 first page, and then the top of the second page. And<br/>15 just let me know when you're ready. All set?<br/>16 A. Yes.<br/>17 Q. First of all, Exhibit 6 recounts a call<br/>18 from you to Janice Smith. And the letter, which is<br/>19 Exhibit 6, states that this occurred approximately<br/>20 9:35 a.m., is that consistent with your own memory?<br/>21 A. No.<br/>22 Q. That your call to her was some time before<br/>23 10 o'clock that day, correct?<br/>24 A. Correct.<br/>25 Q. So when you say it's not consistent with</p>   | <p style="text-align: right;">Page 68</p> <p>1 I'd try to call somebody, see if I can get some<br/>2 comment.<br/>3 Q. By the way, was there a reason why it was<br/>4 Fannie Mae in particular?<br/>5 A. They are a big mortgage company.<br/>6 Q. And I apologize if I asked you this<br/>7 before, but had you heard anything about the possible<br/>8 suspension of the long bond before October 31, 2001?<br/>9 A. I can't recall.<br/>10 Q. Now, there's reference here to a Lesia or<br/>11 Lesia Bullock, media relations manager; do you see<br/>12 that?<br/>13 A. Um-hum, yes.<br/>14 Q. Do you know Ms. Bullock?<br/>15 A. I'm not sure, I don't think so.<br/>16 Q. And so did you have any awareness that she<br/>17 was at all privy to what you were saying on October<br/>18 31, 2001?<br/>19 A. No.<br/>20 Q. Okay, okay. And I take it nobody from<br/>21 Fannie Mae ever called you back with any kind of a<br/>22 comment, right?<br/>23 A. No.<br/>24 Q. Did you make any notes of your -- the<br/>25 message that you had left for Ms. Smith?</p>                                    |
| <p style="text-align: right;">Page 67</p> <p>1 your memory, what's -- what are you disagreeing with?<br/>2 This is specifically on the 9:35 a.m. piece, we'll<br/>3 break it down into bits and pieces.<br/>4 MR. RITTINGER: I object to the use of the<br/>5 word or the form of disagreeing. I don't think it's<br/>6 a disagreement, I think it's just a different<br/>7 recollection.<br/>8 BY MR. SHOPE:<br/>9 Q. Okay, I'm asking -- basically, what I'm<br/>10 asking for is just to get as best your memory I can.<br/>11 And I recognize that this was five years ago, so I<br/>12 understand that we're testing your memory to the<br/>13 limit here. I just -- what I'm trying to get at is,<br/>14 what's your best memory as to when it was that you<br/>15 called Ms. Smith at Fannie Mae?<br/>16 A. I would guess it would had to have been at<br/>17 least about 10:45 or 10:50. I mean 9:45 to 9:50.<br/>18 Q. And you're basing that on what?<br/>19 A. I'm basing it on the fact that I walked<br/>20 back from the Treasury Department, got into any<br/>21 office, I think I as I mentioned I talked to<br/>22 Mr. Muolo for at least a minute or something. I sat<br/>23 down and tried to write something first, and it just<br/>24 didn't have much pizzazz to it. I went over and<br/>25 looked at the TV, CNBC. And then I put -- I figured</p> | <p style="text-align: right;">Page 69</p> <p>1 A. No.<br/>2 Q. Did you make any notes of your discussion<br/>3 with Mr. -- with your executive editor?<br/>4 A. No.<br/>5 Q. Okay. And did you take any notes at the<br/>6 press conference itself?<br/>7 A. Geez, I don't remember. I don't think I<br/>8 even got a chance to sit down.<br/>9 Q. Was that because it was standing room only<br/>10 in the room where the press conference was being<br/>11 conducted?<br/>12 A. I know I was in the back, that's for sure.<br/>13 Q. So in other words, you came in late, you<br/>14 were in the back, and at least there weren't any<br/>15 chairs that were in close proximity to somebody<br/>16 coming in at the back?<br/>17 A. I just don't remember sitting down.<br/>18 Q. But, I mean -- well, let me put it this<br/>19 way, would it have been your preference to sit if<br/>20 there had been an open chair that was readily<br/>21 accessible?<br/>22 MR. ROSSETTI: Objection.<br/>23 THE WITNESS: I don't know. Usually I do<br/>24 sit down at press conferences.<br/>25 BY MR. SHOPE:</p> |

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## **Exhibit R**

**Cited Excepts and Corresponding Exhibit from  
the Deposition of Frances Anderson  
(August 3, 2006)**

Frances Estelle Anderson

Washington, D.C.

August 3, 2006

Page 1

1 UNITED STATES DISTRICT COURT  
2 DISTRICT OF MASSACHUSETTS  
3 - - - - - )  
4 UNITED STATES SECURITIES AND )  
5 EXCHANGE COMMISSION, )  
6 Plaintiff, )  
7 v. ) No. 05-10983 (NMG)  
8 STEVEN E. NOTHERN, )  
9 Defendant. )  
10 - - - - - )  
11 Washington, D.C.  
12 Thursday, August 3, 2006  
13 Videotape Deposition of FRANCES ESTELLE ANDERSON,  
14 called for examination by counsel for Defendant in  
15 the above-entitled matter, the witness being duly  
16 sworn by CHERYL A. LORD, a Notary Public in and for  
17 the District of Columbia, taken at the offices of  
18 FOLEY HOAG LLP, 1875 K Street, N.W., Suite 800,  
19 Washington, D.C., at 10:10 a.m., Thursday, August 3,  
20 2006, and the proceedings being taken down by  
21 Stenotype by CHERYL A. LORD, RPR, CRR, and  
22 transcribed under her direction.

Frances Estelle Anderson

August 3, 2006

Washington, D.C.

| Page 66  | Page 68   |
|--|---|
| <p>1 Q. Yeah. Yeah. Okay.</p> <p>2 So other than when the secretary himself</p> <p>3 is delivering the press conference, there's not</p> <p>4 ordinarily at least going to be any kind of a Secret</p> <p>5 Service officer right in that conference room?</p> <p>6 A. No.</p> <p>7 Q. Okay. Is there anybody in the quarterly</p> <p>8 refunding conferences who goes around to check badges</p> <p>9 or anything like that?</p> <p>10 A. No.</p> <p>11 Q. Okay. So in theory at least, somebody who</p> <p>12 happened to be in the building and was interested in</p> <p>13 the press conference could just walk into the back</p> <p>14 and quietly take a seat?</p> <p>15 MR. ROSETTI: Objection.</p> <p>16 A. Well, is nobody there to check and see if</p> <p>17 they had a press badge or not, so it's correct.</p> <p>18 BY MR. SHOPE:</p> <p>19 Q. Okay. Now, I don't want to -- have you</p> <p>20 ever heard of a gentleman named Peter Davis?</p> <p>21 A. No.</p> <p>22 Q. Okay. So you don't know anybody by that</p> | <p>1 Q. Okay. Now, I want to ask you a little bit</p> <p>2 about the events of October 31, 2001.</p> <p>3 First of all, was there any change that</p> <p>4 day in the procedures for the quarterly refunding</p> <p>5 conference in relation to earlier refunding</p> <p>6 conferences that you had attended?</p> <p>7 MR. ROSETTI: Objection.</p> <p>8 A. I don't remember. I don't recall, because</p> <p>9 most time, I had come in early and do what I have to</p> <p>10 do. I don't remember.</p> <p>11 BY MR. SHOPE:</p> <p>12 Q. You don't recall whether there was any</p> <p>13 kind of a change?</p> <p>14 A. No.</p> <p>15 Q. Okay. Now, did you actually sit in the</p> <p>16 room during the quarterly refunding conference?</p> <p>17 A. No.</p> <p>18 Q. Okay. So that was different.</p> <p>19 Right?</p> <p>20 A. Right.</p> <p>21 Correct.</p> <p>22 Q. Where did you -- what did you do during</p> |
| Page 67  | Page 69   |
| <p>1 name yourself?</p> <p>2 A. No.</p> <p>3 Q. Okay. All right.</p> <p>4 Now, I want to turn --</p> <p>5 MR. ROSETTI: Would this be a good time to</p> <p>6 take a break?</p> <p>7 MR. SHOPE: Sure.</p> <p>8 We can take a short break. That's fine.</p> <p>9 Off the record.</p> <p>10 THE VIDEOGRAPHER: Here marks the end of</p> <p>11 videotape number 1. The time on the screen is</p> <p>12 11:07:25. We're going off the record.</p> <p>13 (Recess.)</p> <p>14 THE VIDEOGRAPHER: Here marks the</p> <p>15 beginning of tape number 2. Time on the screen is</p> <p>16 11:15:59. We're back on the record.</p> <p>17 BY MR. SHOPE:</p> <p>18 Q. Okay. We've just had a short break,</p> <p>19 Ms. Anderson.</p> <p>20 During the break, did you discuss your</p> <p>21 testimony with either Ms. Williams or Mr. Rosetti?</p> <p>22 A. No.</p>  | <p>1 the quarterly refunding conference?</p> <p>2 A. I was outside the hallway.</p> <p>3 Q. Okay. Now, is that the hallway to which</p> <p>4 you just referred onto which the 2 doors opened from</p> <p>5 the diplomatic room?</p> <p>6 A. Correct.</p> <p>7 Q. Okay. And what were you doing out in the</p> <p>8 hallway?</p> <p>9 A. Well, I was actually in the junior</p> <p>10 (phonetic) counselor's office at their doorway</p> <p>11 watching the work that was on the table.</p> <p>12 Q. Okay. Let's break that down.</p> <p>13 The junior counselor's office, where is</p> <p>14 that?</p> <p>15 MR. ROSETTI: General counsel.</p> <p>16 BY MR. SHOPE:</p> <p>17 Q. I'm sorry.</p> <p>18 It was general counsel's office?</p> <p>19 A. It's right there beside the diplomatic</p> <p>20 room.</p> <p>21 Q. Now, is the secretary's large conference</p> <p>22 anywhere near the diplomatic room?</p>      |

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August 3, 2006

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|--|--|
| <p>1 A. That's how they pull the documents up on</p> <p>2 the Web site.</p> <p>3 Q. Okay. So you added -- was that you</p> <p>4 added -- is that just a sequential number you add</p> <p>5 from previous versions?</p> <p>6 A. Whatever the last press release, we just</p> <p>7 add the next number.</p> <p>8 Q. Okay. So you presumably had that handled</p> <p>9 from the last one you did?</p> <p>10 A. Correct.</p> <p>11 Q. So you added the number, and you made sure</p> <p>12 that it was naming the proper -- where did you put</p> <p>13 the current secretary's name?</p> <p>14 A. It's not -- okay.</p> <p>15 At the top of the document when you</p> <p>16 generate -- when you put this on the Web, the top of</p> <p>17 the document is the date, whatever date is goes out.</p> <p>18 Then under that, you will put -- to say, John Snow,</p> <p>19 dash, 450, you add that.</p> <p>20 You put -- just cut-and-paste and whatever</p> <p>21 document put it in, and just make sure that the</p> <p>22 document lines -- it don't have double lines. And</p> | <p>1 If it's not a final copy, it will pull up</p> <p>2 a different area -- pull up a different format, and</p> <p>3 sometimes you have to go back maybe once or twice to</p> <p>4 try to correct the format. And all I have to do is</p> <p>5 to take the spaces out.</p> <p>6 Q. Okay. And did you have to do that on that</p> <p>7 day?</p> <p>8 A. No.</p> <p>9 Q. Okay. So basically, after you've sent it</p> <p>10 from your C drive to the staging server, you would</p> <p>11 then look at it on the screen?</p> <p>12 A. Correct.</p> <p>13 Q. You just scroll through it to make sure</p> <p>14 that there's no double lines or no other weird</p> <p>15 formatting changes.</p> <p>16 Right?</p> <p>17 A. Correct.</p> <p>18 Q. I mean, you're not actually reading the</p> <p>19 text of this?</p> <p>20 A. Correct.</p> <p>21 Q. Okay. And then you send a command that</p> <p>22 sends it to the Treasury, the list -- the listed</p> |
| Page 111   | Page 113   |
| <p>1 then you save it to staging, and then you look at it</p> <p>2 and if it's okay, you send it to the Web.</p> <p>3 Q. Okay. And so when you have to look --</p> <p>4 when you look at the staging to make sure it's okay,</p> <p>5 what is it that you're looking for in particular?</p> <p>6 In other words what are the problems that</p> <p>7 crop up?</p> <p>8 A. Double lines.</p> <p>9 Q. Okay.</p> <p>10 A. Or --</p> <p>11 Q. But I thought -- so let's clarify.</p> <p>12 You're checking for double lines before</p> <p>13 you FTP the document to the staging server?</p> <p>14 True?</p> <p>15 A. Correct.</p> <p>16 Q. Okay. So do you have to check for double</p> <p>17 lines again when it's on the staging server?</p> <p>18 A. Sometimes after you do it, it may be --</p> <p>19 sometimes it depends on how they generate the text.</p> <p>20 They may put some in that when you put stuff on the</p> <p>21 Web site, the Web site pulled out everything that</p> <p>22 they put in.</p>   | <p>1 Treasury Web site.</p> <p>2 Right?</p> <p>3 A. Correct.</p> <p>4 Q. Okay. And that command, execute, that's</p> <p>5 like a matter of seconds.</p> <p>6 Right?</p> <p>7 A. Yeah.</p> <p>8 MS. WILLIAMS: Objection.</p> <p>9 BY MR. SHOPE:</p> <p>10 Q. Okay. Now, at the time you did this, I</p> <p>11 gather you had no awareness of any embargo?</p> <p>12 A. Correct.</p> <p>13 Q. Okay. Your belief was that this was for</p> <p>14 immediate release?</p> <p>15 A. Correct.</p> <p>16 Q. Correct?</p> <p>17 So would it be fair to say that you were</p> <p>18 therefore trying to get it out as promptly as you</p> <p>19 could?</p> <p>20 MS. WILLIAMS: Objection.</p> <p>21 A. My routine is, after the press conference</p> <p>22 is over, if they say -- whatever embargo time, if</p>   |

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|---|---|
| <p>1 MR. SHOPE: Sure.</p> <p>2 Off the record.</p> <p>3 THE VIDEOGRAPHER: Going off the record.</p> <p>4 Time on the screen is 12:01:40.</p> <p>5 (Recess.)</p> <p>6 MR. SHOPE: Mark this as the next exhibit.</p> <p>7 (Anderson Exhibit No.5</p> <p>8 was marked for</p> <p>9 identification.)</p> <p>10 THE VIDEOGRAPHER: Going back on the</p> <p>11 record. Time on the screen is 12:05:46.</p> <p>12 BY MR. SHOPE:</p> <p>13 Q. All right. I'm showing you what's been</p> <p>14 marked as exhibit 5 to your deposition.</p> <p>15 Those are papers produced by the SEC in</p> <p>16 this case. And they show the same email that we</p> <p>17 looked at on exhibit 2. And then there's the</p> <p>18 attached text of a press release.</p> <p>19 Is that consistent with all the testimony</p> <p>20 you've been giving about what the press release that</p> <p>21 you received from Ms. Holahan looked like?</p> <p>22 A. Correct.</p> | <p>1 BY MR. SHOPE:</p> <p>2 Q. Okay. So that was -- in other words, what</p> <p>3 you produced for purposes of photocopying that</p> <p>4 morning?</p> <p>5 A. Correct.</p> <p>6 Q. And that was what was handed out to the</p> <p>7 press people as they walked into the room?</p> <p>8 A. Correct.</p> <p>9 Q. And this Treasury News letterhead on</p> <p>10 exhibit 6, that was something that you had on your</p> <p>11 computer desktop?</p> <p>12 MR. ROSETTI: Objection.</p> <p>13 A. It's copies that we -- that back in 2000,</p> <p>14 we -- it was in I think green or blue. We have</p> <p>15 copies from the print shop that we generate for press</p> <p>16 releases.</p> <p>17 BY MR. SHOPE:</p> <p>18 Q. Okay. So in other words, what you had</p> <p>19 from the print shop were blank -- pieces of paper</p> <p>20 that had a colored letterhead on the top. They were</p> <p>21 blank on the bottom.</p> <p>22 And then you would use that as the</p>   |
| Page 119  | Page 121  |
| <p>1 Q. So in other words, that doesn't have any</p> <p>2 kind of embargo time on it?</p> <p>3 A. Correct.</p> <p>4 Q. Okay. I see.</p> <p>5 And so there's no date on that either; is</p> <p>6 that correct?</p> <p>7 A. Correct.</p> <p>8 MR. SHOPE: So why don't we mark this as</p> <p>9 the next exhibit.</p> <p>10 (Anderson Exhibit No.6</p> <p>11 was marked for</p> <p>12 identification.)</p> <p>13 BY MR. SHOPE:</p> <p>14 Q. So Ms. Anderson, I'm showing you what's</p> <p>15 been marked as exhibit 6 to your deposition.</p> <p>16 Is exhibit 6 how the press release</p> <p>17 ultimately appeared on the Web site after you made</p> <p>18 the addition that you made and posted it on the Web</p> <p>19 site?</p> <p>20 MS. WILLIAMS: Objection.</p> <p>21 A. This is what I produced to give to the</p> <p>22 press people.</p>  | <p>1 photocopy paper for -- to generate the release that</p> <p>2 would be handed out to the press?</p> <p>3 A. Correct.</p> <p>4 Q. So each individual reporter was getting a</p> <p>5 version that had colored ink on it?</p> <p>6 A. No.</p> <p>7 I would use the colored ink in one press</p> <p>8 release. Then I would take the colored ink and paper</p> <p>9 and produce black-and-white copies, so they would ge</p> <p>10 a black-and-white copy of the first copy would be in</p> <p>11 color.</p> <p>12 Q. Okay. So the first copy that you had in</p> <p>13 color, was that something where you took the text</p> <p>14 that you got from Ms. Holahan and then you printed it</p> <p>15 out on your desktop?</p> <p>16 A. Correct.</p> <p>17 Q. So you -- basically you put the colored</p> <p>18 letterhead paper in and fed that into the printer for</p> <p>19 purposes of generating the first version?</p> <p>20 A. Correct.</p> <p>21 Q. And then you would photocopy that and the</p> <p>22 reporters would get a black-and-white copy?</p> |

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| Page 122  | Page 124   |
|---|--|
| <p>1 A. Correct.</p> <p>2 Q. All right. That's helpful.</p> <p>3 You mentioned earlier in your testimony</p> <p>4 that there were -- that there was a press release</p> <p>5 number, and you would have the initials of the</p> <p>6 secretary of the Treasury at the time.</p> <p>7 Correct?</p> <p>8 A. Correct.</p> <p>9 Q. All right. Is that on exhibit 6, the</p> <p>10 Treasury News version?</p> <p>11 A. Paul O'Neill, dash, 749.</p> <p>12 Q. Okay.</p> <p>13 MR. ROSETTI: John, I don't know if you</p> <p>14 want to clarify it. It doesn't actually say, Paul</p> <p>15 O'Neill. It says, PO.</p> <p>16 BY MR. SHOPE:</p> <p>17 Q. Is says, PO 749, and "PO" stands for Paul</p> <p>18 O'Neill?</p> <p>19 A. Correct.</p> <p>20 Q. Is that -- what Ms. Holahan emailed you,</p> <p>21 you added that to the text?</p> <p>22 A. Correct.</p>            | <p>1 A. Correct.</p> <p>2 Q. Right?</p> <p>3 And that -- the words for immediate</p> <p>4 release were not on what Ms. Holahan emailed you?</p> <p>5 A. Correct.</p> <p>6 Q. Okay. But you knew about -- because she</p> <p>7 hadn't put anything about an embargo that meant in</p> <p>8 your understanding for immediate release?</p> <p>9 A. Correct.</p> <p>10 Q. Okay. And then exhibit 6 -- this is the</p> <p>11 copy going out to the -- by hand to the reporters,</p> <p>12 that has the October 31, 2001, date?</p> <p>13 A. Correct.</p> <p>14 Q. And that again was something that you had</p> <p>15 added before 9 o'clock that morning?</p> <p>16 A. Correct.</p> <p>17 Q. Okay. Now, exhibit 6 says, contact Betsy</p> <p>18 Holahan, and a phone number.</p> <p>19 A. Correct.</p> <p>20 Q. Okay. Was that something that you added?</p> <p>21 A. Correct.</p> <p>22 Q. Okay. Now, was that going to go on the</p>           |
| Page 123  | Page 125   |
| <p>1 Q. In fact PO 749 in exhibit 6 seems to be in</p> <p>2 a different font from her text?</p> <p>3 A. Correct.</p> <p>4 Q. And that's consistent -- that makes sense</p> <p>5 to you?</p> <p>6 A. Yeah.</p> <p>7 Correct.</p> <p>8 Q. All right. Now, so when it came time for</p> <p>9 you to post the press release to the Web site, you</p> <p>10 had already added PO 749 earlier that morning for</p> <p>11 purposes of generating the photocopies for the</p> <p>12 reporters?</p> <p>13 A. Correct.</p> <p>14 Q. Okay. And you had also added the words,</p> <p>15 for immediate release.</p> <p>16 A. On the 7- -- on the original document for</p> <p>17 the press?</p> <p>18 Q. Yeah.</p> <p>19 Exhibit 6, which you passed out and handed</p> <p>20 to the reporters?</p> <p>21 A. Correct.</p> <p>22 Q. That has the words for immediate release?</p> | <p>1 Web site?</p> <p>2 A. No.</p> <p>3 Q. Okay. So to -- exhibit --</p> <p>4 MR. ROSETTI: When you say, "that" --</p> <p>5 MR. SHOPE: Okay.</p> <p>6 BY MR. SHOPE:</p> <p>7 Q. The words contact Betsy Holahan on, and</p> <p>8 the 202 phone number below it, were those going to go</p> <p>9 on the Web site?</p> <p>10 A. No.</p> <p>11 Q. Why is that?</p> <p>12 A. That's just for the purpose of the press</p> <p>13 people, that if they wanted to contact the initial</p> <p>14 press person about this subject, they know who to</p> <p>15 call. On the Web site is the site to send domestic</p> <p>16 finance text. They know who to call for that</p> <p>17 particular person.</p> <p>18 Q. Okay. So before you took the text --</p> <p>19 before you took the text from exhibit 6 to put it on</p> <p>20 the Web site, you had to delete the words, contact</p> <p>21 Betsy Holahan and the phone number?</p> <p>22 A. No.</p> |

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Frances Estelle Anderson

August 3, 2006

Washington, D.C.

|  |   |
|--|---|
| <p style="text-align: right;">Page 286</p> <p>1 A. It's showing me the document.</p> <p>2 Q. It's showing you the document, but it's</p> <p>3 showing you the document as reformatted by the</p> <p>4 staging server?</p> <p>5 A. Correct.</p> <p>6 Q. Okay. You're comparing that to the hard</p> <p>7 copy -- to a hard copy of what Ms. Holahan had</p> <p>8 emailed you at the beginning of the day?</p> <p>9 A. Correct.</p> <p>10 Q. Okay. You go through it to see -- to try</p> <p>11 to match up your form -- the format on the staging</p> <p>12 server as closely as you can to what she had emailed</p> <p>13 you earlier in the day?</p> <p>14 A. Correct.</p> <p>15 Q. Okay. And at some point, you satisfied</p> <p>16 yourself that the 2 matched as closely as you were</p> <p>17 going to be able to make the match.</p> <p>18 Correct?</p> <p>19 A. Correct.</p> <p>20 Q. Okay. So at that point you saved all the</p> <p>21 work that you'd done.</p> <p>22 Correct?</p> | <p style="text-align: right;">Page 288</p> <p>1 A. I have no idea.</p> <p>2 MR. SHOPE: I have nothing further.</p> <p>3 MR. ROSETTI: I don't have any further</p> <p>4 questions.</p> <p>5 Thank you.</p> <p>6 THE VIDEOGRAPHER: Here marks the end of</p> <p>7 videotape deposition of Frances Anderson. Time on</p> <p>8 the screen is 15:38:11. We're going off the record.</p> <p>9 (Whereupon, at 3:41 p.m., the taking of</p> <p>10 the instant deposition ceased.)</p> <p>11</p> <p>12</p> <p>13 _____</p> <p>14 Signature of the Witness</p> <p>15 SUBSCRIBED AND SWORN to before me this _____ day of</p> <p>16 _____, 20____.</p> <p>17</p> <p>18 _____</p> <p>19 Notary Public</p> <p>20 My Commission Expires: _____</p> <p>21</p> <p>22</p>  |
| <p style="text-align: right;">Page 287</p> <p>1 A. Correct.</p> <p>2 Q. Okay. And thereafter, you began the</p> <p>3 process to transfer from the staging server to the</p> <p>4 actual Treasury Web site?</p> <p>5 A. Correct.</p> <p>6 Q. Okay. And that's simply the update</p> <p>7 command?</p> <p>8 MS. WILLIAMS: Objection.</p> <p>9 A. I forgot what the word was.</p> <p>10 BY MR. SHOPE:</p> <p>11 Q. You don't remember -- you don't</p> <p>12 remember -- you recall -- you said "post" before.</p> <p>13 A. Post, yeah.</p> <p>14 Q. So your memory is that the command is</p> <p>15 called "post" or something like that?</p> <p>16 MS. WILLIAMS: Objection.</p> <p>17 A. Correct.</p> <p>18 BY MR. SHOPE:</p> <p>19 Q. All right. You have no idea whether the</p> <p>20 staging server and the Web site are synchronized.</p> <p>21 Is that a fair statement?</p> <p>22 MR. ROSETTI: Objection.</p>  | <p style="text-align: right;">Page 289</p> <p>1 CERTIFICATE OF COURT REPORTER</p> <p>2 UNITED STATES OF AMERICA )</p> <p>3 DISTRICT OF COLUMBIA )</p> <p>4 I, CHERYL A. LORD, the reporter before</p> <p>5 whom the foregoing deposition was taken, do hereby</p> <p>6 certify that the witness whose testimony appears in</p> <p>7 the foregoing deposition was sworn by me; that the</p> <p>8 testimony of said witness was taken by me in machine</p> <p>9 shorthand and thereafter transcribed by</p> <p>10 computer-aided transcription; that said deposition is</p> <p>11 a true record of the testimony given by said witness;</p> <p>12 that I am neither counsel for, related to, nor</p> <p>13 employed by any of the parties to the action in which</p> <p>14 this deposition was taken; and, further, that I am</p> <p>15 not a relative or employee of any attorney or counsel</p> <p>16 employed by the parties hereto, or financially or</p> <p>17 otherwise interested in the outcome of this action.</p> <p>18</p> <p>19 CHERYL A. LORD</p> <p>20 Notary Public in and for</p> <p>21 the District of Columbia</p> <p>22 My Commission expires April 30, 2011</p> |

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DEPARTMENT OF THE TREASURY

# TREASURY NEWS

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FOR IMMEDIATE RELEASE  
October 31, 2001

Contact: Betsy Holahan  
(202) 622-2960

UNDER SECRETARY OF THE TREASURY FOR DOMESTIC FINANCE  
PETER R. FISHER  
REMARKS AT THE NOVEMBER 2001 QUARTERLY REFUNDING

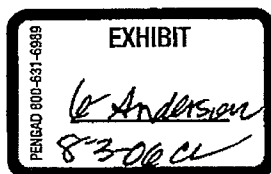
As a consequence of the further weakening of the economy and the increased federal outlays that have occurred since the attacks of September 11<sup>th</sup>, the near-term financing requirements of the federal government are larger than we anticipated just three months ago at our last quarterly refunding in August. In this setting, the management of the Treasury's marketable debt needs to anticipate the possibility of a unified budget deficit for this fiscal year and, perhaps, the following fiscal year as well. However, even if this happens, we expect that the federal government will return to surpluses in the coming years.

With this outlook in mind, today we are announcing:

- The terms of the November refunding, including a new 5-year note in the amount of \$16 billion and a reopening of the 5 percent 10-year note issued in August 2001 in the amount of \$7 billion; and that
- We are adjusting the debt buyback program as follows:
  - We will continue to conduct buybacks for the remainder of this calendar year;
  - We will make no buybacks in January 2002; and
  - Beginning in February 2002, we will announce at our quarterly refundings the amount and timing of any buyback operations for the subsequent three-month period; and finally that

PO-749

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\*U.S. Government Printing Office: 1998 - 619-559

- We are suspending issuance of the 30-year bond: there will be no auction of 30-year securities in February 2002 and we plan no further auctions of either 30-year nominal or inflation-adjusted bonds.

#### Recent Changes in the Fiscal Outlook

Debt issuance over the past several years has been structured in an environment of large budget surpluses. However, the fiscal environment has changed substantially over the past few months due to the slowdown in economic activity and to the federal government's prompt response to the attacks of September 11<sup>th</sup>. The Treasury's debt management has adjusted already, and will continue to adjust, as we accommodate the federal government's increased financing needs during this period. But our expectation is that these heightened financing requirements will prove short-lived, as the economy eventually strengthens, and as the pressures for increased federal outlays stemming from the attacks of September 11<sup>th</sup> subside.

#### Suspension of Thirty-Year Borrowing

The debt management strategy of the Treasury has been to strive to be regular and predictable in the issuance of debt while minimizing borrowing costs over many years and interest rate cycles. The Treasury does not try to outsmart the market at any one moment or to be a "market timer" with respect to any particular shape of the yield curve. However, debt management necessarily involves judgments about the size and duration of the federal government's borrowing needs. This compels us to focus on likely borrowing needs over the coming years but we also take into account the likely consequences of unlikely outcomes.

We do not need the 30-year bond to meet the government's current financing needs, nor those that we expect to face in coming years. Looking beyond the next few years, as I already observed, we believe that the likely outcome is that the federal government's fiscal position will improve after the temporary setback that we are now experiencing.

There are two less likely outcomes that we have also considered.

First, it is possible that the federal government will return to significant and sustained budget surpluses even more quickly than we now expect. In this event, maintaining current issuance levels of 30-year bonds would be unnecessary and expensive to taxpayers.

Second, we face the possibility that sustained surpluses do not materialize as promptly as we now expect. If later in this decade it turns out that 30-year borrowing is necessary to meet the government's financing needs, it is still likely that our decision to suspend 30-year borrowing at this time will have saved the taxpayers money. In addition, the reintroduction of the 30-year bond, at some point in the future, if necessary, would likely be costless to the Treasury.

The 30-year bond no longer maintains a position of significance in the financial markets. Its role and its liquidity have been significantly impaired by the substantial reduction of issuance that has occurred over the last decade. But the markets have functioned smoothly during this period while both activity and attention have shifted to our 10-year offerings.

As long as we have borrowing requirements to finance, the Treasury will seek to maintain the liquidity and depth of the instruments we issue as a means of achieving the lowest cost of borrowing for the taxpayer over time. At this time, the best means for us to do this is to suspend issuance of the 30-year bond and concentrate our borrowing needs on our other instruments.

#### Adjustment of the buyback program

In response to the altered budget outlook for this fiscal year, we are also making adjustments in our buyback program. Beginning in February 2002, our decisions on whether to conduct buyback operations, and on the amount and timing of any purchases, will be made at the time of our regular quarterly refunding announcements and will be based upon three factors:

- first, our projections of the federal government's annual, unified surplus or deficit position;
- second, our projections of that three-month period's cash position; and,
- third, our analysis of how best to minimize borrowing costs over time.

In making the transition to these new procedures, our buyback operations for the remainder of this calendar year will continue in line with our prior announcements. In August we stated that we would be purchasing approximately \$9 billion during the fourth calendar quarter. So far we have purchased \$2.5 billion and the remaining \$6.5 billion will be purchased in November and December. Due to the holidays in November and December, however, the timing of our specific announcements will be altered from recent practice. We will make announcements of the specific amounts and maturities of our purchases on November 14 and 28 and on December 12 and 19 for operations to take place on the following day.

We will make no buyback purchases in January 2002. Beginning with our February 2002 quarterly refunding, we will include the details of any buyback operations to be conducted in the subsequent three months in our regular refunding announcements.

In light of the information that we now have, market participants should understand that there are likely to be periods in which we do not conduct buyback operations and that there are likely to be other periods in which we do conduct such operations, consistent with the ebb and flow of our cyclical cash position. But the

presence or absence of these operations will be clearly announced, in advance, as part of our refunding process.

#### **Terms of the November Refunding**

I will now turn to the terms of the November Refunding. We are offering \$23 billion of notes to refund approximately \$21.6 billion of privately held notes and bonds maturing on November 15, raising approximately \$1.4 billion. The securities are:

1. A new 5-year note in the amount of \$16 billion, maturing November 15, 2006.
2. A re-opening of the 5% 10-year note issued in August 2001 and previously reopened in October 2001, maturing August 15, 2011, in the amount of \$7 billion.

These securities will be auctioned on a yield basis at 1:00 p.m. eastern time on Tuesday, November 6, and Wednesday, November 7, respectively. The balance of our financing requirements will be met through 2-year note and bill offerings.

As announced on Monday, we estimate that we will have a \$35 billion cash balance on December 31 and a \$30 billion cash balance on March 31.

Our next quarterly refunding announcement will take place on Wednesday, January 31, 2002.

## **Exhibit S**

**Cited Excerpts from the SEC Investigative  
Testimony of Robert Falconer (November 28, 2001)**

| Page 7742   | Page 3  |
|---|---|
| <p>UNITED STATES SECURITIES AND EXCHANGE COMMISSION</p> <p>In the Matter of: )<br/>             TRADING IN CERTAIN )<br/>             TREASURY ISSUES ) File No. HO-9353</p> <p>WITNESS: Robert T. Falconer</p> <p>PAGES: 1 through 237</p> <p>PLACE: Securities &amp; Exchange Commission<br/>             450 5th Street, N.W. - Room 11602<br/>             Washington, D.C. 20549</p> <p>DATE: Wednesday, November 28, 2001</p> <p>The above-entitled matter came on for hearing at 12:10 p.m. pursuant to notice.</p> <p>APPEARANCES:</p> <p>On behalf of the Securities and Exchange Commission:</p> <p>JOSHUA RAVITZ, ESQ.<br/>             WILLIAM M. HATHAWAY, ESQ.<br/>             Securities &amp; Exchange Commission<br/>             450 5th Street, N.W.<br/>             Washington, D.C. 20549<br/>             (202) 942-4613</p> <p>On behalf of the Witness:</p> <p>WILLIAM J. NISSEN, ESQ.<br/>             Sidley, Austin, Brown &amp; Wood<br/>             Bank One Plaza<br/>             10 Dearborn Street<br/>             Chicago, Illinois 60603</p> | <p>EXHIBITS: DESCRIPTION IDENTIFIED</p> <p>216 Treasury News press release dated October 30, 2001. "Treasury Department to Hold Quarterly News Conference." 165</p> <p>217 Two page document marked ST 21 and ST 22 167</p> <p>218 One page document 180</p> <p>219 23-page document marked ST 0154 - 176 215</p> <p>220 21-page document marked ST 0133 - 0153 217</p> |

| Page 2  | Page 4  |
|---|---|
| <p>CONTENTS</p> <p>WITNESS: Page</p> <p>Robert T. Falconer 3</p> <p>EXHIBITS: DESCRIPTION IDENTIFIED</p> <p>202 Copy of Securities and Exchange Form 1662 5</p> <p>203 Letter from the United States Securities and Exchange Commission dated November 8, 2001 to Sangamon Trading, includes subpoena duces tecum. 22</p> <p>204 6 page document 60</p> <p>205 2 page IPC Trading Turrent 60</p> <p>206 Floor plan of Sangamon Trading 60</p> <p>207 One page document 84</p> <p>208 Eight page exhibit 124</p> <p>209 Four page document 150</p> <p>210 Treasury Press Release dated April 30, 2001 151</p> <p>211 Five-page document, ST0012 through ST0016 152</p> <p>212 Treasury Press Release dated May 2, 2001 154</p> <p>213 Document captioned, "Davis Capital Investment Ideas September 6, 2001, 12:00 p.m." C0017 156</p> <p>214 Document captioned, "Davis Capital Investment Ideas October 16, 2001, 5:15 p.m." C0018 159</p> <p>215 Copy of Lanston future calendar for the week of October 29th, 2001 161</p> | <p>PROCEEDINGS</p> <p>1 MR. HATHAWAY: Okay, it is approximately 12:10.</p> <p>2 This is November 28, 2001. Would you raise your right hand.</p> <p>3 Whereupon,</p> <p>4 ROBERT T. FALCONER</p> <p>5 was called as a witness and, having been first duly sworn by</p> <p>6 the, was examined and testified as follows:</p> <p>7 EXAMINATION</p> <p>8 BY MR. HATHAWAY:</p> <p>9 Q Would you please state and spell your full name for</p> <p>10 the record?</p> <p>11 A Robert -- R-o-b-e-r-t -- Thomas -- T-h-o-m-a-s --</p> <p>12 Falconer -- F-a-l-c-o-n-e-r.</p> <p>13 Q I am William Maxwell Hathaway. And with my to my</p> <p>14 right is Joshua Ravitz. And we are both officers of the</p> <p>15 Commission for the purposes of this proceeding.</p> <p>16 This is an investigation by the United States</p> <p>17 Securities and Exchange Commission, In the Matter of Trading</p> <p>18 in Certain Treasury Issues. Our file number is HO-9353.</p> <p>19 The purpose of the investigation is to determine</p> <p>20 whether there have been any violations of the federal</p> <p>21 securities laws.</p> <p>22 However the facts developed in this investigation</p> <p>23 might constitute violations of other state or federal civil</p> <p>24 or criminal statutes.</p> |

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1 office still, that calendar for that day?

2 A Yes.

MR. RAVITZ: I believe we can add that to our request.

5 MR. HATHAWAY: Yes. We'd like to see that

6 calendar.

7 BY MR. HATHAWAY:

8 Q Did there, at some point in time on October 31st,

9 come a point in time that you learned that the Treasury had

10 announced some action regarding the 30-year bond?

11 A Yeah.

12 Q When did you hear something about what the Treasury

13 was doing about the 30-year bond?

14 A Pete Davis called me.

15 Q Approximately when did that occur?

16 A Approximately 8:40 Chicago time.

17 Q How do you place that in time? What is it that you

18 tie to the recollection of it being around 8:40?

19 A I glanced at my watch.

20 Q I'll represent to you that there are some records

21 that we have that on a preliminary reading suggest that a

22 phone call was placed to the number (312) 984-1331 at

23 approximately 9:37 Eastern time, which would be 8:37 Chicago

24 time. Is that consistent with your recollection now of when

25 the call occurred?

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A Surely.

2 Q Do you have any reason to think that the call at

3 8:37 is not the correct time of the call?

4 A No. I mean, is my watch accurate?

5 Q Were you on the speaker phone when this call came

6 in?

7 A I was punching --

8 Q Were you sitting at your work station?

9 A Sitting at my work station.

10 Q Were you the only person on your end of the phone?

11 A Yeah.

12 Q As far as you knew, was Mr. Davis the only person

13 on his end of the phone?

14 A Yes.

15 Q Could you tell whether he was calling you on a cell

16 phone or a land line phone?

17 A Couldn't tell.

18 Q Was the reception good and clear?

19 A Yeah.

20 Q What did he say to you?

21 A He said the Treasury was doing away with the 30-

22 year bond. They were also going to do away with the 30-year

23 TIPS security. The buybacks would be stopped, would continue

24 through the year and would be stopped in January and that

25 they'd also offer 16 billion of a new five-year and 7 billion

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1 of a reopened ten-year.

2 Q Did he say anything else?

3 A No.

4 Q Your testimony that he had Treasury was doing away

5 with the 30-year bond, were those his words, "was doing away

6 with"?

7 A I can't say.

8 Q As well as you can say what were the exact words

9 that Mr. Davis used in communicating what Treasury was doing

10 about the 30-year bond?

11 A I can't really say exact words.

12 Q Did he use the word "announced" at any point in his

13 conversation that you remember?

14 A I don't recall.

15 Q Did he use the word "abolished"?

16 A I don't recall.

17 Q "Eliminated"?

18 A I don't recall.

19 Q "Suspended"?

20 A He didn't use the word "suspended."

21 Q Did he use any words such as "probably, might,

22 could, likely" or possibly"?

23 A No.

24 Q Did he in any way qualify what Treasury was going

25 to do about the 30-year bond?

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1 A I don't recall anything.

2 Q Did he say anything to suggest to you that this was

3 his forecast as to what Treasury was going to do about the

4 30-year bond?

5 A No. He didn't suggest it was a forecast.

6 Q Did he say anything to suggest to you that he was

7 passing on a rumor to you?

8 A No, he did not.

9 Q Did he say anything to the effect of this is what

10 he had heard that Treasury was going to do?

11 A No, he did not.

12 Q After your conversation with Mr. Davis ended, was

13 there any doubt in your mind that the Treasury had, in fact,

14 eliminated the 30-year bond?

15 A No.

16 Q Did Mr. Davis say anything to suggest that the

17 information he had just given you was embargoed?

18 A No.

19 Q Did he say anything to suggest to you that the

20 information he'd given you was non-public?

21 A No.

22 Q Did he say anything to suggest to you that the

23 information he'd given you was confidential?

24 A No.

25 Q Did he say anything to you that in any way

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1 suggested to you that this information had not yet been  
 2 announced by Treasury?  
 3 A No.  
 4 Q Did he say anything in any way that suggested to  
 5 you that this information had not yet been released by the  
 6 Treasury to the public?  
 7 A No.  
 8 Q Did he say anything in any way suggesting to you  
 9 that this information had not yet been released by Treasury  
 10 to the media?  
 11 A No.  
 12 Q Did he say anything in any way to suggest to you  
 13 that this information would give Sangamon Trading a jump on  
 14 the market?  
 15 A No.  
 16 Q Did he tell you where he was calling from?  
 17 A No.  
 18 Q Were you able to surmise from what you'd heard in  
 19 the background or elsewhere where he was?  
 20 A No.  
 21 Q Could you tell whether he was in an office, as  
 22 opposed to a hallway?  
 23 A No.  
 24 Q Did you hear voices around him, other voices?  
 25 A No. I don't think I heard anyone other than Pete

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1 Davis.  
 2 Q Did you ask any questions of Mr. Davis?  
 3 A No.  
 4 Q Did you say or -- did you ask anything about where  
 5 he'd gotten his information?  
 6 A No.  
 7 Q Did he suggest to you in any way where he'd gotten  
 8 this information?  
 9 A No.  
 10 Q How long did this conversation, the entire  
 11 conversation with Mr. Davis, last?  
 12 A Very briefly.  
 13 Q Less than a minute?  
 14 A I would say less than a minute.  
 15 Q Did you say anything at all in this conversation,  
 16 any word at all? Did you say thank you?  
 17 A I don't recall.  
 18 Q Did you say good-bye?  
 19 A No.  
 20 Q Did he say good-bye?  
 21 A No. I don't believe so.  
 22 Q Did he impart this information that you've just  
 23 given us about the four different points that you have given  
 24 us and then simply hang up?  
 25 A That's my recollection.

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1 Q Did he say anything to the effect of, "Thought  
 2 you'd want to know this"?  
 3 A No.  
 4 Q Did he saying anything to the effect of, "I thought  
 5 this would be important information for you"?  
 6 A No.  
 7 BY MR. RAVITZ:  
 8 Q How about introducing himself when he first called  
 9 you?  
 10 BY MR. HATHAWAY:  
 11 Q Did he say, "Hey, this is Pete Davis"?  
 12 A I don't recall that. I don't think so.  
 13 Q How did you know it was Pete Davis?  
 14 A I just recognized his voice. I don't think he  
 15 said -- introduced himself any more than I introduced myself.  
 16 I said hello.  
 17 Q Did you just say hello?  
 18 A Yeah.  
 19 MR. NISSEN: Can we go off the record just a  
 20 second?  
 21 MR. HATHAWAY: We're off the record.  
 22 (Off the record.)  
 23 MR. HATHAWAY: We're back on the record. It's  
 24 approximately 4:25. After a discussion, Mr. Falconer has  
 25 agreed to try to get on the next flight out and push back his

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1 departure time, knowing that there is some risk that that may  
 2 not work out, and he does have other travel plans. I  
 3 appreciate very much your willingness to put yourself in that  
 4 situation. If you become too nervous about those travel  
 5 arrangements, let me know, and we will stop.  
 6 Let me have marked now as Exhibit 218 a one-page  
 7 document. I'm handing a copy to your attorney. This is a  
 8 document that was produced to us by your attorney. It has  
 9 the handwritten designation BF 1. The staff designation is  
 10 ST 0010.  
 11 (SEC Exhibit No. 218 was marked  
 12 for identification.)  
 13 BY MR. HATHAWAY:  
 14 Q I'm now handing a copy of that to you now. Have  
 15 you seen this before today?  
 16 A Yes, I have.  
 17 Q What is it?  
 18 A It's a photocopy of my notes associated with Pete  
 19 Davis' October 31st call regarding the refunding.  
 20 Q I would like to have you please read to me each of  
 21 the words that are on this.  
 22 A The first word is "anthrax," and it had nothing to  
 23 do with Pete Davis. That was a great mystery to me and took  
 24 me several looking at my -- with my attorney to figure out  
 25 what on earth it was. It's unrelated totally to today.

**Exhibit T**

**Cited Excerpts from the Deposition of David Harris  
(July 25, 2006)**

David Harris

Tampa, FL

July 25, 2006

Page 1

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UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF MASSACHUSETTS

- - - - - x

UNITED STATES SECURITIES :  
AND EXCHANGE COMMISSION, :  
Plaintiff, : C.A. 05-10983 (NMG)  
vs. :  
STEVEN E. NOTHERN, :  
Defendant. :

- - - - - x

VIDEOTAPED DEPOSITION OF DAVID HARRIS

Reported by:

Linda C. Mead, CSR, CCR  
Tampa, FL  
Tuesday, July 25, 2006

| Page 66  | Page 68   |
|--|---|
| <p>1 Q Okay.</p> <p>2 A So there would have been no clerical</p> <p>3 errors through there.</p> <p>4 Q Okay. Let's go through your -- the</p> <p>5 information you have on your entry at 12:40 and 11</p> <p>6 seconds. You say, The file has a timestamp of on</p> <p>7 the production server RWRR. What does that mean?</p> <p>8 A Okay. This file -- This information was</p> <p>9 gathered from the production machine. That first</p> <p>10 field, RWRR, is the file permissions. What that</p> <p>11 tells us is who has -- who has access to that file,</p> <p>12 whether it's read, write, execute, which are</p> <p>13 standard Unix permissions.</p> <p>14 Q What does that -- What does that mean?</p> <p>15 A Okay. This means that the world basically</p> <p>16 has read access to the file and the owner has the</p> <p>17 ability to read and write or make changes to the</p> <p>18 file.</p> <p>19 Q Then there's a IUST press treas. What</p> <p>20 does that -- Actually I guess it's 1 space UST press</p> <p>21 space. What does that 1 mean?</p> <p>22 A The 1 I have no idea.</p> <p>23 Q What does UST press mean?</p> <p>24 A That would have been the user name that</p> <p>25 owned that file.</p> | <p>1 When a file is changed into Unix, it records when</p> <p>2 that file -- the time and date when that file was</p> <p>3 last edited.</p> <p>4 Q When it was last edited?</p> <p>5 A Edited. Changed.</p> <p>6 Q So in terms of the process going from</p> <p>7 desktop to staging, staging to production, what</p> <p>8 would that mean?</p> <p>9 A The way that the -- our -- the WorldCom</p> <p>10 Solaris product worked is when a file was uploaded</p> <p>11 from their desktop to the staging machine it got a</p> <p>12 timestamp. And then when that file was pushed from</p> <p>13 staging to production using CMS it would have</p> <p>14 preserved that timestamp that was on the staging</p> <p>15 machine.</p> <p>16 So in this case it would have meant that</p> <p>17 file was moved from their desktop to the staging</p> <p>18 machine on October 31st at 9:40 a.m.</p> <p>19 Q Now, you say that's a -- it's an actual</p> <p>20 timestamp that's put on the file?</p> <p>21 A That's correct.</p> <p>22 Q All right. And you're saying that that</p> <p>23 9:40 represents when it went from the desktop to the</p> <p>24 staging server?</p> <p>25 A That's correct. That is the time that the</p>                            |
| Page 67  | Page 69   |
| <p>1 Q And treas, t-r-e-a-s?</p> <p>2 A Would have been the group that owned that</p> <p>3 file.</p> <p>4 Q What does 9175 indicate?</p> <p>5 A That is the size of the file in bytes.</p> <p>6 Q October 31, what is that?</p> <p>7 A That is the date that that file was last</p> <p>8 changed.</p> <p>9 Q And then there's a date there at 9:40.</p> <p>10 What does that mean?</p> <p>11 A That would have been 9:40 a.m. And that</p> <p>12 would have been when the file was last changed.</p> <p>13 Q How do you know that's 9:40 a.m.?</p> <p>14 A It would have been on 24-hour time.</p> <p>15 Q Military time?</p> <p>16 A That's correct.</p> <p>17 Q And then PO749 dot HTM. What does that</p> <p>18 mean?</p> <p>19 A That is the name of the file.</p> <p>20 Q That's the file that the treasury was</p> <p>21 asking you when did it go from staging to</p> <p>22 production?</p> <p>23 A That's correct.</p> <p>24 Q Now, what does that time 9:40 mean?</p> <p>25 A That means when the file was last changed.</p>  | <p>1 staging server reports.</p> <p>2 Q And the source of this information, this</p> <p>3 UST press, the 9175, the date and the time of 9:40</p> <p>4 and then the file name PO749, what was the source of</p> <p>5 that?</p> <p>6 A That was from the production server</p> <p>7 itself. The operating system reported that as the</p> <p>8 time, date, name and server of the owner and the</p> <p>9 file permissions.</p> <p>10 Q And you cut and pasted that information</p> <p>11 from the production server to the -- to your ticket</p> <p>12 here?</p> <p>13 A That's correct.</p> <p>14 Q And the reason why this 9:40 is listed on</p> <p>15 the production server because that -- You get a</p> <p>16 timestamp. When you go from desktop to staging, you</p> <p>17 get a timestamp. In this case it was 9:40, correct?</p> <p>18 A That's correct.</p> <p>19 Q And then when it's pushed from the pro --</p> <p>20 staging server to the production server, it</p> <p>21 preserves that timestamp, that original timestamp?</p> <p>22 A That's correct.</p> <p>23 Q You say on page two, it says, This matches</p> <p>24 the timestamp of the file on the staging server when</p> <p>25 it was pushed using CMS. What does that mean?</p> |

| Page 86  | Page 88   |
|--|---|
| <p>1 questions and I'll be finished and Mr. Toone can ask<br/>2 you some questions.</p> <p>3 With regard to when information is on the<br/>4 staging server, are you aware of any searches that<br/>5 you can do on Google, Yahoo, whatever, that would<br/>6 get you to information that would be on the staging<br/>7 server?</p> <p>8 MR. TOONE: Objection.</p> <p>9 THE DEPONENT: It's possible that they<br/>10 might. Like I said, I'm not exactly sure how<br/>11 they go about building their searching database<br/>12 to do stuff, but it's possible that they could.<br/>13 I doubt it, but it's possible.</p> <p>14 BY MR. ROSSETTI:</p> <p>15 Q Why do you doubt it?</p> <p>16 A I think most of the time those sites work<br/>17 by gathering what people already view and then<br/>18 indexing that and then making it easier to search<br/>19 from there. For the most part people who would be<br/>20 visiting the staging machine would only be people<br/>21 who would be involved in the development of the<br/>22 server.</p> <p>23 MR. ROSSETTI: Okay. Mr. Harris, I don't<br/>24 have any further questions for you. Mr. Toone<br/>25 will ask you questions, and then based on his</p> | <p>1 have an IP address, routers, gateways, whatever,<br/>2 which is a method of identifying each individual<br/>3 piece of hardware.</p> <p>4 Q So is an IP address a location on the<br/>5 internet?</p> <p>6 A It's a location of a piece of device. It<br/>7 doesn't necessarily have to be on the internet.<br/>8 Every network device that exists that uses TCP/IP has<br/>9 an IP address. It could be --</p> <p>10 For instance, a home network, each device<br/>11 in a home network would also have an IP address. It<br/>12 may not be accessible to the entire internet itself,<br/>13 but anything that runs TCP/IP as a network would have<br/>14 an IP address.</p> <p>15 Q Well, how do you know if an IP address is<br/>16 accessible by the internet?</p> <p>17 A You would know by -- There are certain IP<br/>18 addresses that are not routable to the internet.<br/>19 There are some that are firewalled that are not<br/>20 accessible by the internet.</p> <p>21 For instance, if you own a company you --<br/>22 and you want to have internet access for all your<br/>23 employees but you don't want the internet to be able<br/>24 to connect to servers inside your company, you would<br/>25 block that access from the outside in. You can do</p> |
| Page 87  | Page 89   |
| <p>1 questioning I might have some further<br/>2 clarifying questions for you.</p> <p>3 THE DEPONENT: All right.</p> <p>4 EXAMINATION</p> <p>5 BY MR. TOONE:</p> <p>6 Q Are you okay with going ahead or would you<br/>7 like to take a break?</p> <p>8 A Oh, no. I'm good right now.</p> <p>9 Q Okay. Well, let me know if you want to<br/>10 take a break, because we've been going for awhile.</p> <p>11 A Okay.</p> <p>12 Q First of all, thank you very much for<br/>13 coming today and testifying. And my knowledge of<br/>14 computer technology is not very well advanced, so I<br/>15 apologize if I repeat or ask questions that you may<br/>16 have already covered with Mr. Rossetti, but I just<br/>17 want to make sure my understanding is clear. Okay?</p> <p>18 A Okay.</p> <p>19 Q What exactly is an IP address?</p> <p>20 A IP address is what the internet uses to<br/>21 designate a server or a device on the internet.<br/>22 It's a method for identifying where something is.<br/>23 So the -- So each server would have at least one IP<br/>24 address on it where anybody who wants to find<br/>25 something would go to it, and devices would also</p>                           | <p>1 that.</p> <p>2 Q Can you tell by looking at an IP address<br/>3 whether or not it is available on the internet?</p> <p>4 A Some of them you can. Some you can't.</p> <p>5 Q How can you tell those that you can --<br/>6 that you know are available on the internet, how can<br/>7 you tell?</p> <p>8 A They have a specific network range that<br/>9 are called non-routable IP addresses that you know<br/>10 are not accessible.</p> <p>11 Q Okay. Now, looking at Exhibit 3 at the<br/>12 first page there are 10 IP addresses listed on the<br/>13 first page. Can you tell by looking at those IP<br/>14 addresses whether or not they're available on the<br/>15 internet?</p> <p>16 A They are all available.</p> <p>17 Q They are. And how do you know that?</p> <p>18 A Because they are all routable IP<br/>19 addresses.</p> <p>20 Q And can you just explain what -- what in<br/>21 those IP addresses tells you that those -- that they<br/>22 are available on the internet?</p> <p>23 A The first -- The first set of numbers, the<br/>24 208, is all you really need to know.</p> <p>25 Q What does that tell you?</p>   |

| Page 90  | Page 92   |
|--|---|
| <p>1 A It tells us that it's not in that list of</p> <p>2 IP addresses that's public, that's private.</p> <p>3 Q Okay. Now, a file that is moved to one of</p> <p>4 these IP addresses that is available on the</p> <p>5 internet, does that mean that that document -- that</p> <p>6 file, excuse me, is available at a particular</p> <p>7 internet location?</p> <p>8 A That's correct. On the web. Because</p> <p>9 we're all dealing with web servers for all this</p> <p>10 stuff.</p> <p>11 Q Right. Can you just explain what that</p> <p>12 distinction means.</p> <p>13 A The whole -- Using like Internet Explorer,</p> <p>14 Netscape, whatnot, to view a serve -- view a web</p> <p>15 page is a method of accessing files on the internet.</p> <p>16 It's one specific program I guess basically using</p> <p>17 html and stuff.</p> <p>18 There are different parts of the internet</p> <p>19 that most people don't deal with that don't involve</p> <p>20 web pages. Because we did nothing but web pages --</p> <p>21 well, mostly web pages here, all this stuff would</p> <p>22 have been dealing with web pages.</p> <p>23 Q Okay. That's helpful. Thank you.</p> <p>24 Now, in November 2001 you worked for</p> <p>25 WorldCom, correct?</p> | <p>1 A I'm get -- I'm thinking you're asking me</p> <p>2 if I've -- if I recall actually working on any of</p> <p>3 those specific IP addresses.</p> <p>4 Q That is my question, yes.</p> <p>5 A Specifically no.</p> <p>6 Q Do you have any knowledge as to who had</p> <p>7 access to any of those five IP addresses?</p> <p>8 A It would have been -- Specifically it</p> <p>9 would have been any of the people listed under</p> <p>10 technical contacts. Whether or not they actually</p> <p>11 excess -- accessed them, I don't know.</p> <p>12 Q Okay.</p> <p>13 A We know the IP address they came from and</p> <p>14 the user name and password -- well, user name they</p> <p>15 used. Which individual person did all that we don't</p> <p>16 know.</p> <p>17 Q Okay. So you're pointing to on page 1 of</p> <p>18 Exhibit 3 the technical contacts; Brad Green,</p> <p>19 Jeffrey West, Tim Clapin. Are those the contacts</p> <p>20 that you're referring to?</p> <p>21 A That's correct.</p> <p>22 Q And your testimony is that you believe</p> <p>23 that those people had access to the IP addresses</p> <p>24 associated with the staging server?</p> <p>25 A They would have, yes.</p> |
| Page 91  | Page 93   |
| <p>1 A I believe it was WorldCom, yeah.</p> <p>2 Q And you didn't work for the treasury</p> <p>3 department directly?</p> <p>4 A No.</p> <p>5 Q Okay. Did you have any experience in</p> <p>6 setting up either the production machine or the</p> <p>7 staging machine used by treasury?</p> <p>8 A I may have done some initial setups. I</p> <p>9 don't recall at that time.</p> <p>10 Q Okay. Do you recall now having worked on</p> <p>11 any of the setups?</p> <p>12 A Actually physically setting them up?</p> <p>13 Q Yes.</p> <p>14 A I don't know.</p> <p>15 Q Do you have any specific knowledge as to</p> <p>16 where exactly the IP address is listed on --</p> <p>17 under -- on Exhibit 3, page 1, the five IP addresses</p> <p>18 listed under host location 1 colon STAG dash 13A?</p> <p>19 Do you have any direct recollection working on those</p> <p>20 particular IP addresses?</p> <p>21 MR. ROSSETTI: I'm sorry. What was the</p> <p>22 question?</p> <p>23 BY MR. TOONE:</p> <p>24 Q The question -- Well, let me --</p> <p>25 Do you understand the question?</p>  | <p>1 Q Okay. Do you know who else did or did not</p> <p>2 have access to those IP addresses?</p> <p>3 A No, I don't. We know that -- We know that</p> <p>4 they were given a specific IP address and a user</p> <p>5 name and password. Whether the customer had a</p> <p>6 development team of more than 3 people or 20 people</p> <p>7 we don't know.</p> <p>8 Q Do you know anything about whether</p> <p>9 treasury had procedures to keep these IP addresses</p> <p>10 from being known to other people?</p> <p>11 A I don't know.</p> <p>12 Q And just to clarify what I believe you</p> <p>13 testified to earlier, a document that is FTP'd -- Is</p> <p>14 that a proper term FTP'd?</p> <p>15 A That's correct.</p> <p>16 Q -- from a desktop to this staging server,</p> <p>17 that document is placed on the internet; is that</p> <p>18 correct?</p> <p>19 A That's correct.</p> <p>20 Q So looking on page 2 of Exhibit 3, the</p> <p>21 second line down, the file was FTP'd to the staging</p> <p>22 server at 9:40 colon 23 a.m. on October 31st -- Did</p> <p>23 I read that correctly?</p> <p>24 A That's correct.</p> <p>25 Q That sentence means that the file in</p>                |

| Page 94  | Page 96  |
|--|--|
| <p>1 question was moved to the internet at that time?</p> <p>2 MR. ROSSETTI: Objection.</p> <p>3 THE DEPONENT: On the staging server,</p> <p>4 that's correct.</p> <p>5 BY MR. TOONE:</p> <p>6 Q But in being moved to the staging server</p> <p>7 it was placed on the internet; is that correct?</p> <p>8 A Yes.</p> <p>9 Q Let me just back up a little bit. Do you</p> <p>10 read computer magazines or other periodicals?</p> <p>11 A Yes.</p> <p>12 Q Which ones do you read?</p> <p>13 A Oh, God. There are so many.</p> <p>14 Q Can you just list some that you tend --</p> <p>15 that you typically read.</p> <p>16 A There's The Wired magazine. Computer</p> <p>17 Shopper. Slash Dot's a website of computer</p> <p>18 articles. There's several of them. Some of the</p> <p>19 ones I can think of off the top of my head.</p> <p>20 Q Okay. Great.</p> <p>21 And why do you read those publications?</p> <p>22 A Basically to -- entertainment and to keep</p> <p>23 up with what's going on.</p> <p>24 Q Right. Right. To keep yourself current</p> <p>25 with current developments and information</p> | <p>1 Q And what did Mr. Rossetti tell you he was</p> <p>2 calling in regards to?</p> <p>3 A The contents of this ticket. He said that</p> <p>4 there was some investigation going on about what was</p> <p>5 going on back then.</p> <p>6 Q Did he explain to you how this ticket was</p> <p>7 relevant to the investigation?</p> <p>8 A He may have. I don't recall.</p> <p>9 Q What knowledge do you have now about this</p> <p>10 case?</p> <p>11 A I -- Basically from my understanding there</p> <p>12 was -- that around this time frame that the treasury</p> <p>13 department was -- excuse me, was making some kind of</p> <p>14 notification they weren't going to be issuing the</p> <p>15 30-year bond or something, and that this went out</p> <p>16 early before it was supposed to. Something around</p> <p>17 that effect. I don't know too many details.</p> <p>18 Q Anything else that you recall?</p> <p>19 A No, not really.</p> <p>20 Q And is that information based on your</p> <p>21 conversation with Mr. Rossetti?</p> <p>22 A I don't know. It could have been</p> <p>23 knowledge from what was happening back then. It</p> <p>24 could have been from calls. I don't know where that</p> <p>25 came from. It's floating around in here somewhere.</p> |
| Page 95  | Page 97  |
| <p>1 technology?</p> <p>2 A That's correct.</p> <p>3 Q What did you do to prepare for this</p> <p>4 deposition?</p> <p>5 A I spoke with Mr. Rossetti on the phone</p> <p>6 going over the contents of this ticket.</p> <p>7 Q And you're referring to Exhibit 3?</p> <p>8 A Yes.</p> <p>9 Q Sorry. I need to do that for the record.</p> <p>10 A That's fine. Yes.</p> <p>11 Q When did you speak with Mr. Rossetti?</p> <p>12 A I don't know the exact times and dates.</p> <p>13 Q Approximately how long ago did you first</p> <p>14 speak with Mr. Rossetti?</p> <p>15 A Maybe a month ago I guess. I don't have</p> <p>16 the dates and times listed on me.</p> <p>17 Q That's fine. Did you speak with him by</p> <p>18 telephone?</p> <p>19 A That's correct.</p> <p>20 Q And how long did you speak with</p> <p>21 Mr. Rossetti for?</p> <p>22 A The first time I believe may have been two</p> <p>23 hours, three hours. I don't recall.</p> <p>24 Q Two or three hours?</p> <p>25 A Something like that.</p>   | <p>1 Q Now, you said you spoke with Mr. Rossetti</p> <p>2 approximately maybe a month ago; is that correct?</p> <p>3 A I'm guessing, yeah.</p> <p>4 Q Okay. Did you speak with him again since</p> <p>5 then?</p> <p>6 A Yes.</p> <p>7 Q When do you last -- When did you speak</p> <p>8 with him next, sir?</p> <p>9 A I don't recall. Actually thinking back,</p> <p>10 the first time might have been like two or three</p> <p>11 months ago, and then another time maybe a month ago</p> <p>12 when we were going over this again and setting up a</p> <p>13 deposition date.</p> <p>14 Q And on both occasions you reviewed</p> <p>15 Exhibit 3, the ticket?</p> <p>16 A I think so. I don't know if we did it</p> <p>17 when we actually set the date up.</p> <p>18 Q How did you have a copy of the ticket</p> <p>19 during these phone calls?</p> <p>20 A It was e-mailed to me by Mr. Rossetti.</p> <p>21 Q Do you recall when he e-mailed the ticket</p> <p>22 to you?</p> <p>23 A It would have been the first time we</p> <p>24 talked.</p> <p>25 Q Had you seen the ticket before</p>   |

## **Exhibit U**

**Cited Excerpts from the Deposition  
of Verizon Business (Anne Wilson)  
(October 6, 2006)**

1 IN THE UNITED STATES DISTRICT COURT FOR THE  
2 DISTRICT OF MASSACHUSETTS  
3 (Boston Division)

4 - - - - - x

5 UNITED STATES SECURITIES AND )

6 EXCHANGE COMMISSION, )

7 Plaintiff, )

8 v. ) Civil Action

9 STEVEN E. NOTHERN, ) No. 05-10983

10 Defendant. ) (NMG)

11 - - - - - x

12 Washington, D.C.

13 Friday, October 6, 2006

14 Video 30(b)(6) Deposition of:

15 ANNE LAWRENCE WILSON,

16 a witness called for examination in the

17 above-entitled action, beginning at 10:14 a.m.

18 before JOE W. STRICKLAND, RPR, CRR, a notary

19 public in and for the District of Columbia, taken

20 at the offices of the Securities and Exchange

21 Commission, 100 F Street, NE, Washington, DC

22 20549, when were present:

Page 74

1 A. Because of the way our system works,  
2 the rdist system that copies the file from one  
3 server to another maintains the file header info,  
4 the timestamp. So it would have, when it copied  
5 the file from the staging server over to the  
6 production server, it copied -- it used the same  
7 timestamp.

8 Q. So this 9:40, just to clarify, is not  
9 the time that it landed on the production server?

10 A. Right.

11 Q. It would have been the time it was last  
12 updated on the staging server?

13 A. Uh-huh. Yeah, updated on the staging  
14 server or initially copied onto the staging  
15 server. FTP doesn't work the same way rdist  
16 does. Once the file was uploaded, it would have  
17 gotten a new stamp on the staging server.  
18 Because it was most likely changing operating  
19 systems going from Windows to Solaris.

20 Q. If you could turn to the second page of  
21 the document.

22 A. Uh-huh.

Page 75

1 Q. The top line: "This matches the  
2 timestamp of the file on the staging server when  
3 it was pushed using CMS." What does that mean?

4 A. The timestamp -- well, when it -- I  
5 think I may have misspoken here. Because he's  
6 telling you the time -- it matches the timestamp  
7 that he shows us, which is when it was FTP'd to  
8 the staging server. The next line is more  
9 relevant.

10 Q. Okay. Explain the next line to me.

11 A. Okay. The file was FTP'd to the  
12 staging server at 9:40 and 23 seconds. It was --  
13 which means from the user or whether they were at  
14 the Department of Treasury or Jeffery West's  
15 house, they FTP'd, uploaded it on to the staging  
16 server using the FTP protocol. FTP keeps a log  
17 of any file transfers and that's what he's pulled  
18 out here. So this is --

19 Q. This TREAS underline?

20 A. Underscore 1-FTP.LOG. That's the file  
21 name. Then we have the time that that file entry  
22 was made. October 31st, 9:40:23 of 2001. Then

Page 76

1 we have -- this is the host name where the file  
2 was uploaded from. This TIAS-GW7.TREAS.GOV. The  
3 size of the file that was uploaded, 9175 bytes,  
4 and then the full name of the file including the  
5 path that was in the releases directory. The  
6 name of the file was PO749.HTM. HTM is an HTML  
7 file or a web page.

8 Q. Where did this entry come from, the  
9 staging or production server?

10 A. This came from the staging server.  
11 There was no FTP running on the production  
12 server.

13 Q. And so in order to get this line, would  
14 Mr. Harris need to cut and paste it?

15 A. Correct. He would have gone on the  
16 staging server and gripped the log. He would  
17 have displayed the log file. It's going to show  
18 you the last entries first, so he would have just  
19 gone and pulled -- you can display it on the  
20 screen and do a copy and paste.

21 Q. And the log file contains what kind  
22 of -- what information?

Page 77

1 A. The log file would include any uploads  
2 or downloads, any transmission via FTP. This log  
3 file would only show FTP transmission.

4 Q. And so this log file that we see in  
5 this document tells us what about the timing?

6 A. It tells us that the file first landed  
7 on the staging server at 9:40 and 23 seconds.  
8 These logs would have been more precise than what  
9 we just looked at which just doesn't give  
10 seconds. As far as the file list itself, it  
11 shows only hours and minutes.

12 Q. Okay. You said that TIAS-GW7.TREAS.GOV  
13 is a host name?

14 A. Yeah.

15 Q. What is a host name?

16 A. Host name would match up with an IP  
17 address. It's an origin identifier. That's  
18 where the person uploading was coming from. In  
19 some logs we record IP addresses and in some logs  
20 we record host names. Here host names give you  
21 more information, it's just easier to read. It  
22 is less literal.

Page 146

1 Q. You were working for UUNET and UUNET  
2 was owned by WorldCom?

3 A. Yes, but UUNET paid my paycheck. We  
4 were a separate unit.

5 Q. Okay. When you were working for UUNET  
6 in 2001, did you personally work on the servers  
7 that the Treasury Department had?

8 A. I may have in some capacity. I was  
9 responsible for backups and web reporting on  
10 those servers.

11 Q. Do you recall ever speaking to anyone  
12 at the Treasury Department in the course of your  
13 work?

14 A. No.

15 Q. Which employees at UUNET dealt directly  
16 with representatives from the Treasury Department  
17 at that time?

18 A. Well, no one would have been  
19 specifically assigned. It would have been the  
20 Level 1 people answering the phone and whoever  
21 picked up the ticket per their request.

22 Q. But there was never an occasion where

Page 148

1 our own networks. But those networks can be  
2 connected via the Internet.

3 Q. Is there another term for the network  
4 that exists within a particular company?

5 A. A local area network. A LAN. Or even  
6 a wide area network. A WAN.

7 Q. And the Internet is the network that  
8 connects all of those smaller networks; is that  
9 right?

10 A. Yes.

11 Q. You mentioned IP protocol. What is  
12 that?

13 A. It's a standard way for computers to  
14 talk to each other. It's a way of transmitting  
15 bits and bytes.

16 Q. Is that protocol maintained by a  
17 particular organization?

18 A. It's a standard. Used to be the  
19 Internet Society that maintained those  
20 standards.

21 Q. Is that Internet Society, is that a  
22 private organization?

Page 147

1 you got drawn into a dialogue between -- a  
2 dialogue with the Treasury Department?

3 MS. WILLIAMS: Objection.

4 THE WITNESS: Not that I recall.

5 BY MR. TOONE:

6 Q. Do you recall ever speaking with any  
7 employee from the Treasury Department?

8 MS. WILLIAMS: Objection.

9 THE WITNESS: No, but I wouldn't  
10 necessarily remember.

11 BY MR. TOONE:

12 Q. As with Ms. Williams, I apologize that  
13 my level of technological knowledge isn't, you  
14 know, a hundredth as developed as yours, so I'm  
15 going to ask some kind of basic questions.

16 A. Sure.

17 Q. What is the Internet?

18 A. Internet is a network of networks that  
19 operates over the IP protocol.

20 Q. A network of networks?

21 A. Correct. Meaning we can all work for  
22 different companies. All of our companies have

Page 149

1 A. With funding from the U.S. Government.

2 Q. You said the Internet Society used to  
3 maintain those standards. They don't do it  
4 anymore?

5 A. I don't recall what the name of the  
6 organization is now.

7 Q. Are there parts of the Internet that  
8 are not public?

9 MS. WILLIAMS: Objection.

10 THE WITNESS: By definition, the  
11 Internet is public. But certain things can be  
12 secured.

13 BY MR. TOONE:

14 Q. Let's go back. By definition the  
15 Internet is public. What do you mean by that?

16 A. We get into semantics here, I'm  
17 afraid. You know, there's a fine line when you  
18 have a network of networks as to what is the  
19 Internet and what is private space. So I'm  
20 sorry, your question again?

21 Q. I'm just trying to get a better  
22 understanding. You said by definition the

Washington, DC

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1 Internet is public, but there are things that can  
2 be secured. I'd just like you, if you can, to  
3 say a little bit more about that.

4 A. IP addresses, we call them publicly  
5 routable, meaning they're announced to the -- to  
6 the Internet. It's like having a telephone  
7 network. But anybody that has a telephone number  
8 generally can be dialed. Right? And that's a  
9 public telephone because somebody can connect to  
10 it via the network. Although you might have some  
11 access control by having a switchboard in the  
12 middle.

13 So the stuff behind the switchboard  
14 would be on the big Internet, but it's local.  
15 It's protected.

16 Q. Can you have -- I'm sorry, I thought  
17 you were finished.

18 A. So someone may think they're on the  
19 Internet, but they are really on a network  
20 connected to the Internet.

21 Q. If an IP address is publicly  
22 routable --

Page 151

1 A. Uh-huh?

2 Q. -- can you control access to that IP  
3 address?

4 A. Yes, you can.

5 Q. How?

6 A. With the use of filters. Depends on  
7 what operating system or software is running.  
8 But you can configure a server. If, you know,  
9 it's on a server, to reject connections if they  
10 don't meet certain criteria. Perhaps you want  
11 them only to come from a certain IP address or  
12 within a certain range. You only want to allow  
13 people from a certain network to attach.

14 Q. So what does "publicly routable" mean,  
15 then?

16 A. Meaning it's -- it's announced. It's  
17 like having a phone number, versus having an  
18 extension. An extension -- like my extension  
19 might be 347. That's not publicly routable.  
20 Somebody in Kalamazoo couldn't call me if they  
21 just knew my extension 347. But if I had a 703,  
22 XYZ, XYZ, that, is publicly routable.

Page 152

1 Q. So anybody can reach that main number,  
2 but you may not be able to reach the extension?

3 A. Right. But even in that main number,  
4 to bring it back to the analogy, could have some  
5 security protocols. And that's one way the  
6 Internet would be different than your public  
7 phone system, because you could control who dials  
8 that number, so to speak, on the Internet.

9 Q. So I'm just trying to understand this  
10 better.

11 A. Yeah.

12 Q. There are publicly routable IP  
13 addresses that I as a normal citizen cannot get  
14 access to?

15 A. Right. Right. Correct.

16 Q. And how is that access controlled?

17 A. Because someone may have configured the  
18 system to only allow connections from specific  
19 sources.

20 Q. Let's look at the Exhibit Number 6.

21 A. Uh-huh.

22 Q. And on the first page -- we looked at

Page 153

1 this earlier. On the first page the Treasury  
2 production server and the Treasury staging server  
3 are listed. Do you see that?

4 A. Uh-huh.

5 Q. And below each of those are five IP  
6 addresses each?

7 A. Yes.

8 Q. Can you tell from just looking at those  
9 IP addresses whether or not they are publicly  
10 routable?

11 A. They would all be publicly routable,  
12 yes.

13 Q. How can you tell that?

14 A. Because I know that those networks in  
15 Tysons Corner were publicly routable. That all  
16 of our networks in Tysons Corner were publicly  
17 routable.

18 Q. If you didn't have that information  
19 about what was on the Tysons network, would it be  
20 possible to look at these numbers and know  
21 whether or not they were publicly routable?

22 MS. WILLIAMS: Objection.

39 (Pages 150 to 153)

Page 154

1 THE WITNESS: Well, yes, you would  
2 expect them to be because of the 208 and source.

3 BY MR. TOONE:

4 Q. The 208, those are the first three  
5 digits on each number?

6 A. Yeah.

7 Q. What does that tell you?

8 A. That it's -- most nonroutable addresses  
9 would be -- start with 111 or 193. Other  
10 prefixes.

11 Q. Have you heard of the Internet assigned  
12 number authority?

13 A. Uh-huh.

14 Q. What is that?

15 A. They would keep track of the IP  
16 addresses.

17 Q. Has that authority set aside specific  
18 blocks of IP addresses that are available for use  
19 as nonroutable network addresses?

20 MS. WILLIAMS: Objection.

21 THE WITNESS: I don't know the  
22 specifics of how that's done.

Page 155

1 BY MR. TOONE:

2 Q. Now, you said earlier that you knew  
3 from your experience that UUNET that all of these  
4 IP addresses on the first page of Exhibit 6 were  
5 publicly routable; is that right?

6 A. But that doesn't mean that they're  
7 publicly accessible.

8 Q. Well, what do you know about these  
9 numbers being publicly accessible?

10 A. I know that the IP addresses on the  
11 production server would have been publicly  
12 accessible. The IP addresses on the staging  
13 server would have had filters on them so that  
14 only specified addresses could FTP or otherwise  
15 actually connect to that system.

16 Q. Now, you're saying -- you've testified  
17 that the IP filters prevented outsiders from  
18 using the FTP function on these --

19 A. Right.

20 Q. -- on these staging servers; correct?

21 A. Correct.

22 Q. Did those filters also prevent people

Page 156

1 from simply viewing them?

2 A. Not those filters. There would or  
3 could have been additional filters, but those  
4 were under control of the customer.

5 Q. Are you aware of any such filters being  
6 used by the Treasury Department in 2001?

7 A. No.

8 Q. And UUNET itself did not maintain any  
9 filters that prevented outsiders from viewing  
10 these IP addresses in 2001?

11 A. Not to my knowledge.

12 MR. TOONE: We will take a break, if  
13 that's all right.

14 VIDEOGRAPHER: This is the end of tape  
15 2. Off the record at 2:41:21.

16 (Recess.)

17 VIDEOGRAPHER: This is the beginning of  
18 tape 3 in the deposition in the corporate  
19 deposition of Verizon by Anne Wilson. On the  
20 record at 2:44:47.

21 BY MR. TOONE:

22 Q. Let me direct your attention briefly to

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1 documents that were marked, I believe, Exhibit 4  
2 and Exhibit 5.

3 A. Okay.

4 Q. Do you recall discussing these  
5 documents with Ms. Williams?

6 A. Yes.

7 Q. Just now, just today.

8 A. Oh, yes.

9 Q. Did I understand you correctly that  
10 this was a request from Jeffery West to be able  
11 to FTP documents on Treasury's staging server  
12 from his home computer?

13 A. Uh-huh.

14 Q. That's a yes?

15 A. Yes.

16 Q. Did you say that it wasn't necessary,  
17 if the FTP request was coming from within  
18 Treasury Department, to make this kind of a  
19 request?

20 MS. WILLIAMS: Objection.

21 THE WITNESS: I don't think I  
22 specifically said that.

| Page 166   | Page 168  |
|--|---|
| <p>1 in-house or used another contractor?</p> <p>2 A. No.</p> <p>3 Q. Can I refer to you Exhibit Number 6</p> <p>4 again, please. Find it?</p> <p>5 A. Uh-huh. Had help?</p> <p>6 Q. If I could refer you to the last line</p> <p>7 on the first page again.</p> <p>8 A. Uh-huh.</p> <p>9 Q. The line above it says, "This file has</p> <p>10 a timestamp of on the production server," and</p> <p>11 then there is an entry below that. Do you see</p> <p>12 that?</p> <p>13 A. Uh-huh.</p> <p>14 Q. In general terms, what's a timestamp?</p> <p>15 A. It's the date and time of the file. It</p> <p>16 represents when the file was last modified.</p> <p>17 Q. Is this a UNIX function?</p> <p>18 A. No, it's universal to computers.</p> <p>19 Q. So the idea of timestamp isn't specific</p> <p>20 to UNIX?</p> <p>21 A. Isn't unique.</p> <p>22 Q. Was UNIX involved in what's being</p>  | <p>1 was uploaded to the staging server it would get a</p> <p>2 new timestamp there, because of the way the file</p> <p>3 transfer protocol works. It's actually writing a</p> <p>4 new file, bits and bytes. Now, when the file is</p> <p>5 copied from the staging server to the production</p> <p>6 server, it's using the rdist program which sort</p> <p>7 of moves the file and it keeps its header</p> <p>8 information intact, because it's really just</p> <p>9 syncing the files on the two servers. So it</p> <p>10 carries the timestamp over from the first</p> <p>11 server.</p> <p>12 Q. If a document had been FTP'd to the</p> <p>13 staging server?</p> <p>14 A. Uh-huh.</p> <p>15 Q. And then edited on the staging server</p> <p>16 at a subsequent time?</p> <p>17 A. Uh-huh.</p> <p>18 Q. Which time would be reflected in this</p> <p>19 entry on Exhibit 6?</p> <p>20 A. The time of the edit.</p> <p>21 Q. So reading this line on Exhibit 6 --</p> <p>22 A. Uh-huh.</p> |
| Page 167   | Page 169  |
| <p>1 described at the end of this first page in</p> <p>2 Exhibit 6?</p> <p>3 A. Well, a UNIX command, or Solaris</p> <p>4 command, would have been performed in order to</p> <p>5 get this information.</p> <p>6 Q. And what command would that be?</p> <p>7 A. Probably LS space dash AL.</p> <p>8 Q. And this is a command entered into the</p> <p>9 production server?</p> <p>10 A. Correct. It means logging onto the</p> <p>11 production server. LS is short for list. List</p> <p>12 files.</p> <p>13 Q. And you said that the timestamp</p> <p>14 reflects when the file was last modified?</p> <p>15 A. Correct. Which may not have been on</p> <p>16 that server where it currently resides.</p> <p>17 Q. So this timestamp might reflect a</p> <p>18 modification that took place -- strike that.</p> <p>19 If you could just explain what you mean</p> <p>20 by that.</p> <p>21 A. Sure. When the file was last modified,</p> <p>22 it could mean -- at a minimum it's when the file</p> | <p>1 Q. -- this means that the document was not</p> <p>2 edited after 9:40?</p> <p>3 A. Correct.</p> <p>4 Q. If you could just look above that entry</p> <p>5 at the bottom of page 1 of Exhibit 6.</p> <p>6 A. Uh-huh.</p> <p>7 Q. And I'm looking at the entry timed</p> <p>8 12:40:11 p.m. Do you see that?</p> <p>9 A. Yes.</p> <p>10 Q. And it states, "All dates and times on</p> <p>11 both servers are accurate." Do you see that?</p> <p>12 A. Uh-huh.</p> <p>13 Q. Do you have any personal knowledge of</p> <p>14 what, if anything, David Harris did before making</p> <p>15 this entry?</p> <p>16 A. I know that he had logged onto both</p> <p>17 servers.</p> <p>18 Q. Anything else?</p> <p>19 A. No.</p> <p>20 Q. Do you know whether he actually checked</p> <p>21 the accuracy of the dates and times on the two</p> <p>22 servers?</p>  |

## **Exhibit V**

**Cited Excerpts from the Deposition of John Cadogan  
(November 29, 2006)**

Volume: I

Pages: 1-183

Exhibits: 1-8

UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF MASSACHUSETTS

- - - - - x

UNITED STATES SECURITIES AND  
EXCHANGE COMMISSION,

Plaintiff,

v. Civil Action No. 05-10983 (NMG)

STEVEN E. NOTHERN,

Defendant.

- - - - - x

DEPOSITION OF JOHN CADOGAN  
Wednesday, November 29, 2006

8:44 a.m.

FOLEY HOAG LLP

155 Seaport Boulevard

Boston, Massachusetts 02210-2600

Court Reporter: Carol A. Pagliaro, CSR/RPR/RMR

Videographer: Jody Urbati

|   |   |
|---|---|
| <p style="text-align: right;">Page 138</p> <p>1 would do in long bonds in 2001.</p> <p>2 ATTY. SHAPIRO: Objection.</p> <p>3 Q. Would this have been on the larger side,</p> <p>4 smaller side, middle? Any kind of size reference</p> <p>5 you can give to me?</p> <p>6 A. I don't have any real recollection of the</p> <p>7 size. This doesn't stand out as anything out of the</p> <p>8 ordinary.</p> <p>9 Q. And Mr. St. Pierre quoted a price to you, I</p> <p>10 presume.</p> <p>11 ATTY. SHAPIRO: Objection.</p> <p>12 A. I would assume so, yes.</p> <p>13 Q. And did you accept the price indeed that he</p> <p>14 quoted?</p> <p>15 A. I don't remember.</p> <p>16 Q. You don't remember whether or not you made</p> <p>17 some kind of a counteroffer or anything like that?</p> <p>18 A. I don't remember.</p> <p>19 Q. Did you try to shop the purchase with any</p> <p>20 other broker?</p> <p>21 ATTY. SHAPIRO: Objection.</p> <p>22 ATTY. WILLIAMS: Objection.</p> <p>23 A. In respect to this specific transaction we</p> <p>24 are looking at?</p>  | <p style="text-align: right;">Page 140</p> <p>1 what you did on the morning of October 31?</p> <p>2 A. I would see no reason why I wouldn't.</p> <p>3 Q. And do you recall at all whether or not</p> <p>4 there was any price movement that was occurring as</p> <p>5 you were moving into that transaction?</p> <p>6 ATTY. SHAPIRO: Objection.</p> <p>7 A. From what I can remember, the prices --</p> <p>8 prices were moving that morning.</p> <p>9 Q. That would have been a reason to call</p> <p>10 Merrill directly, rather than looking at the Trade</p> <p>11 Web?</p> <p>12 ATTY. WILLIAMS: Objection.</p> <p>13 ATTY. SHAPIRO: Objection.</p> <p>14 A. Could have been.</p> <p>15 Q. And the -- now there is another -- oh, I'm</p> <p>16 sorry, so just finishing up on the -- so the</p> <p>17 price -- so at some point you and Mr. St. Pierre had</p> <p>18 an agreement on price, right?</p> <p>19 ATTY. SHAPIRO: Objection.</p> <p>20 ATTY. WILLIAMS: Objection.</p> <p>21 A. I guess agreement on price, what do you mean</p> <p>22 by that?</p> <p>23 Q. I guess what I'm getting at is at some point</p> <p>24 there was a price that --</p>  |
| <p style="text-align: right;">Page 139</p> <p>1 Q. I'm sorry. It was a bad question. You had</p> <p>2 gotten an order from Mr. Nothorn, Mr. Kurinsky, Mr.</p> <p>3 Kennedy, and Mr. Smith to buy a total of 65 million</p> <p>4 long bonds, right?</p> <p>5 A. Yes, that's correct.</p> <p>6 Q. And this was made to you verbally?</p> <p>7 ATTY. SHAPIRO: Objection.</p> <p>8 A. I believe so, yes.</p> <p>9 Q. Was Merrill the only broker that you called</p> <p>10 with respect to executing that order, or group of</p> <p>11 orders?</p> <p>12 ATTY. SHAPIRO: Objection.</p> <p>13 ATTY. WILLIAMS: Objection.</p> <p>14 A. I don't remember for sure, but I believe</p> <p>15 Merrill was the only person I spoke to, Merrill</p> <p>16 Lynch was the only counterpart.</p> <p>17 Q. At that point, or at least going into the</p> <p>18 discussion with Mr. St. Pierre, as a matter of</p> <p>19 general practice would you have looked at one of</p> <p>20 your screens to see how long bonds were trading at</p> <p>21 that point?</p> <p>22 ATTY. WILLIAMS: Objection.</p> <p>23 A. Yes. As a mode of practice, yes.</p> <p>24 Q. And so do you think that's likely, in fact,</p> | <p style="text-align: right;">Page 141</p> <p>1 A. Looking at this blotter, it looks like there</p> <p>2 was a trade that was done at that price.</p> <p>3 Q. So there was a trade that was done at --</p> <p>4 ATTY. SHAPIRO: When you say looking at</p> <p>5 the blotter, looking at Exhibit No. --</p> <p>6 THE WITNESS: I'm sorry, looking at</p> <p>7 Exhibit No. 566, it looks like a trade --</p> <p>8 ATTY. SHAPIRO: Page 566.</p> <p>9 Q. So it looks like a trade. Did you also have</p> <p>10 to enter the information into the FITS system</p> <p>11 besides keeping it in your handwritten blotter here?</p> <p>12 ATTY. WILLIAMS: Objection.</p> <p>13 A. I guess you have to be more specific. What</p> <p>14 do you mean by entering the information?</p> <p>15 Q. In other words, when you talked before about</p> <p>16 when you would get the orders from the portfolio</p> <p>17 managers electronically on the FITS system that</p> <p>18 after you had done the trade you would type in</p> <p>19 the --</p> <p>20 A. You are saying from an execution standpoint?</p> <p>21 Q. Yes, from the execution -- after you had</p> <p>22 executed the trade, you would type in the FITS</p> <p>23 system what the price had been and so forth? That's</p> <p>24 true with regard to the orders that you get on the</p> |

| Page 178  | Page 180  |
|---|---|
| <p>1 Treasury website on October 31 regarding the</p> <p>2 elimination of the 30-year bond?</p> <p>3 A. I don't remember.</p> <p>4 ATTY. SHOPE: Just one second.</p> <p>5 Q. I believe you said that you noticed that the</p> <p>6 price of the 30-year bond was moving when you</p> <p>7 checked the Trade Web system before you executed the</p> <p>8 \$65 million trade; is that correct?</p> <p>9 A. Yes, I believe so.</p> <p>10 Q. Did you know why the prices were</p> <p>11 moving?</p> <p>12 A. I was not sure, no.</p> <p>13 Q. Do you remember in what direction the price</p> <p>14 was moving?</p> <p>15 A. I believe the prices were moving up.</p> <p>16 Q. Did you check the Trade Web system regarding</p> <p>17 the price of the 30-year bond any other time on the</p> <p>18 morning of October 31?</p> <p>19 A. As a rule of thumb I'm constantly checking</p> <p>20 the Trade Web for pricing.</p> <p>21 Q. Do you recall if the price ever went down</p> <p>22 that morning?</p> <p>23 A. I don't recall if it did or not, but -- I</p> <p>24 don't remember.</p> | <p>1 12:58 p.m.</p> <p>2 (Recess taken.)</p> <p>3 THE VIDEOGRAPHER: Back on the record</p> <p>4 1:04 p.m.</p> <p>5 ATTY. SHOPE: I have nothing further. I</p> <p>6 do note that we have been asking the witness to</p> <p>7 read and sign the transcript, so, in other words,</p> <p>8 you will get a transcript, Mr. Cadogan, you will</p> <p>9 have a chance to make sure that the court reporter</p> <p>10 has accurately transcribed what you said and also</p> <p>11 that your testimony was accurate and note any</p> <p>12 errors, Mr. Shapiro will help you with that, and</p> <p>13 then you will have chance to sign and note any</p> <p>14 errors, all right?</p> <p>15 THE WITNESS: Okay.</p> <p>16 ATTY. SHAPIRO: So can we all agree that</p> <p>17 the deposition is over, concluded?</p> <p>18 ATTY. SHOPE: Yes, we are concluded.</p> <p>19 ATTY. SHAPIRO: Everyone has had an</p> <p>20 opportunity to ask questions?</p> <p>21 ATTY. SHOPE: Yes.</p> <p>22 ATTY. SHAPIRO: Thank you all for your</p> <p>23 assistance.</p> <p>24 THE VIDEOGRAPHER: Here ends today's</p> |
| Page 179  | Page 181  |
| <p>1 Q. What did you have to do to access the Trade</p> <p>2 Web system?</p> <p>3 A. In terms of how to execute a trade or --</p> <p>4 Q. In terms of how to see what the bid and ask</p> <p>5 were.</p> <p>6 A. The Trade Web screen, there are different</p> <p>7 screens for different securities, from mortgage, to</p> <p>8 agencies, to Treasuries, and you click on the</p> <p>9 Treasury screen, and it brings you up a screen of</p> <p>10 actively-traded issues that are constantly changing</p> <p>11 prices.</p> <p>12 Q. Did you have to enter any sort of log-in or</p> <p>13 password?</p> <p>14 A. You log in each morning when you start your</p> <p>15 system.</p> <p>16 Q. Do you recall whether you did that on</p> <p>17 October 31?</p> <p>18 A. I don't remember specifically. As a rule of</p> <p>19 thumb, that system would be on.</p> <p>20 ATTY. WILLIAMS: I don't have any</p> <p>21 further questions at this time.</p> <p>22 ATTY. SHOPE: Let's just take a short</p> <p>23 break.</p> <p>24 THE VIDEOGRAPHER: Off the record at</p>                    | <p>1 deposition of John Cadogan. Off the record at 1:05</p> <p>2 p.m.</p> <p>3</p> <p>4</p> <p>5</p> <p>6</p> <p>7</p> <p>8</p> <p>9</p> <p>10</p> <p>11</p> <p>12</p> <p>13</p> <p>14</p> <p>15</p> <p>16</p> <p>17</p> <p>18</p> <p>19</p> <p>20</p> <p>21</p> <p>22</p> <p>23</p> <p>24</p>  |

46 (Pages 178 to 181)

## **Exhibit W**

**Cited Excerpts from the Deposition of David Kennedy  
(June 26, 2006)**

1 UNITED STATES DISTRICT COURT  
2 FOR THE DISTRICT OF MASSACHUSETTS  
3

4 )  
5 UNITED STATES SECURITIES AND )  
6 EXCHANGE COMMISSION, )  
7 Plaintiff, )

8 )  
9 vs. )

10 )  
11 STEVEN E. NOTHERN, )  
12 Defendant. )

13 C.A. 05-10983 (NMG)  
14

15 VIDEOTAPED DEPOSITION OF DAVID  
16 KENNEDY, a witness called on behalf of the  
17 Plaintiff, pursuant to the provisions of the  
18 Massachusetts Rules of Civil Procedure,  
19 before Jill Shepherd, Registered  
20 Professional Reporter and Notary Public, in  
21 and for the Commonwealth of Massachusetts,  
22 at the offices of U.S. Securities and  
23 Exchange Commission, 33 Arch Street, Boston,  
24 Massachusetts, on Monday, June 26, 2006,  
25 commencing at 10:18 a.m.

| Page 102  | Page 104   |
|---|--|
| <p>1 used Rick Smith most often in the mortgage<br/>2 market. It happens that the Lehman<br/>3 aggregate is about 38 percent<br/>4 mortgage-backed securities, so Rick really<br/>5 was a partner with me on my funds. That's<br/>6 how I viewed him.<br/>7 Q. Okay. Mr. Kennedy, I don't have any further<br/>8 questions for you at this time. Thank you.<br/>9 MR. SHOPE: So it's 20 to 1:00.<br/>10 Why don't we break for lunch right now.<br/>11 MR. ROSSETTI: How much do you<br/>12 think -- are we off? We can go off the<br/>13 record.<br/>14 THE VIDEOGRAPHER: Off the record<br/>15 at 12:37.<br/>16 (Lunch recess.)<br/>17 THE VIDEOGRAPHER: On the record at<br/>18 1:38.<br/>19 * * * * *<br/>20 EXAMINATION BY MR. SHOPE<br/>21 Q. Good afternoon, Mr. Kennedy. We were<br/>22 introduced informally before the deposition<br/>23 began, but I'm John Shope, and I am one of<br/>24 the lawyers for Steve Nothorn. I just<br/>25 wanted to follow-up on some of the things</p>                     | <p>1 Q. And, again, just to be fair to everybody, if<br/>2 you could pause for a moment before<br/>3 answering so that all the objections can be<br/>4 caught in a clean way.<br/>5 Now, you mentioned before that you<br/>6 would monitor prices of different securities<br/>7 on your Bloomberg screen; is that correct?<br/>8 A. Yes.<br/>9 Q. And among others, you would monitor the<br/>10 price of 30-year bonds; is that correct?<br/>11 A. Yes.<br/>12 Q. Okay. And I believe that you testified back<br/>13 in 2001 that on the morning of October 31,<br/>14 2001, before you made any decision to<br/>15 purchase, you had observed that the 30-year<br/>16 bond was rising in price; is that correct?<br/>17 MR. ROSSETTI: Objection.<br/>18 A. Yes.<br/>19 Q. Okay. And was this a factor in your<br/>20 decision to go ahead and make a purchase<br/>21 order once Mr. Nothorn had given you the<br/>22 news of what he had heard from Mr. Davis?<br/>23 A. Yes.<br/>24 Q. Okay. Now, the -- did you consider it to be<br/>25 sort of a difficult call as to whether or</p> |
| Page 103  | Page 105   |
| <p>1 that Mr. Rossetti asked you about earlier<br/>2 today.<br/>3 First of all, I believe you indicated<br/>4 that there had been discussion within the<br/>5 financial world about a possible suspension<br/>6 or elimination of the 30-year bond for some<br/>7 time before October 31, 2001, correct?<br/>8 A. Yes.<br/>9 Q. Okay. And I don't believe that Mr. Rossetti<br/>10 asked you about this, but I believe you<br/>11 testified back in 2001 when you were first<br/>12 interviewed by the SEC that, in fact, when<br/>13 you had been at Harbor Capital you had<br/>14 traded on the expectation at that point that<br/>15 there was going to be an elimination or<br/>16 suspension of the 30-year bond; is that<br/>17 correct?<br/>18 MR. ROSSETTI: Objection.<br/>19 A. Yes.<br/>20 Q. So this was something that you and many<br/>21 others in the market had been thinking about<br/>22 on and off for some time; is that fair to<br/>23 say?<br/>24 A. Yes.<br/>25 MR. ROSSETTI: Objection.</p> | <p>1 not you would go ahead and place an order<br/>2 given the price rise that you were<br/>3 observing, plus the news that Mr. Nothorn<br/>4 was conveying about suspension of the long<br/>5 bond?<br/>6 A. No.<br/>7 Q. In other words, it was an easy decision to<br/>8 buy?<br/>9 A. It seemed to be an easy decision at the<br/>10 time.<br/>11 Q. In fact, it was your assumption that even<br/>12 though he hadn't been there for any of the<br/>13 conversation, that Mr. Varam would want to<br/>14 buy some of the long bonds too, right?<br/>15 A. Yes.<br/>16 Q. So you were being a nice guy and sort of<br/>17 sharing in the purchase, right?<br/>18 A. Part of that teamwork that we're judged on,<br/>19 yes.<br/>20 Q. Okay. Did you make any assumption about<br/>21 whether or not the movement of the price<br/>22 related at all to dissemination of the news<br/>23 that the long bond was being suspended?<br/>24 A. Yes, I did.<br/>25 Q. What was that connection?</p>  |

27 (Pages 102 to 105)

Boston, MA

| Page 106   | Page 108   |
|--|--|
| <p>1 A. That the market -- market players already<br/>2 had this information and they were driving<br/>3 the price of the Treasury, 30-year, up.<br/>4 Q. Okay. So did you have any assumption about<br/>5 whether or not the information that the long<br/>6 bond was being suspended was public at the<br/>7 point you were making your decision?<br/>8 A. I assumed it was, yes.<br/>9 Q. Okay. Now, Mr. Nothern reported that he had<br/>10 gotten this call from Mr. Davis, right?<br/>11 A. Yes.<br/>12 Q. Okay. And I believe you testified back in<br/>13 2001 when the SEC took your deposition in<br/>14 this matter that your assumption was that<br/>15 MFS was not going to be the first company<br/>16 that would be called with information of<br/>17 this type; is that correct?<br/>18 MR. ROSSETTI: Objection.<br/>19 A. Yes.<br/>20 Q. And what was your assumption with regard to<br/>21 which companies would get called first?<br/>22 A. There's a pecking order in the marketplace.<br/>23 I know very well that I'm not on top of the<br/>24 totem pole. There are bigger managers out<br/>25 there with, you know, bigger axes in the</p> | <p>1 for portfolio managers who received what<br/>2 they consider to be important information to<br/>3 sometimes share it with other market<br/>4 players, other brokers, with whom they have<br/>5 relationships, other portfolio managers,<br/>6 people of that type?<br/>7 A. No. I'm not sure I understand your<br/>8 question.<br/>9 Q. Sure. Okay.<br/>10 A. I would share it with my peer group on the<br/>11 trading desk.<br/>12 Q. Would it sometimes be the case that, for<br/>13 example, if you had a relationship with a<br/>14 broker and you heard information that you<br/>15 thought might move the market, you know,<br/>16 there had been a revolution in some country<br/>17 or some company was filing for bankruptcy,<br/>18 something, any information that was of a<br/>19 market-moving nature, you might say, "Hey,<br/>20 if I give this information to this other<br/>21 person, maybe some day he will reciprocate<br/>22 the favor and give me information that's of<br/>23 value to me"?<br/>24 A. That's not the way I've worked.<br/>25 Q. Are you aware that that's something that</p>        |
| Page 107   | Page 109   |
| <p>1 marketplace, that I was not anyone's first<br/>2 call.<br/>3 Q. So in other words, would it be more likely<br/>4 that a bigger company, like a Fidelity<br/>5 Investments, would get called before MFS<br/>6 would get called?<br/>7 MR. ROSSETTI: Objection.<br/>8 A. Possibly, yes.<br/>9 Q. I'm sorry?<br/>10 A. Possibly, yes.<br/>11 Q. Now, I believe that you indicated that when<br/>12 Mr. Nothern relayed the news to the<br/>13 high-grade fixed-income group that he had<br/>14 heard that the Treasury bond was -- the<br/>15 30-year bond was going to be suspended or<br/>16 eliminated that he did that in a<br/>17 matter-of-fact tone of voice. Did I hear<br/>18 that correctly?<br/>19 A. Yes.<br/>20 Q. And, in fact, did Mr. Nothern give you any<br/>21 suggestion that what he -- that he -- that<br/>22 he believed that what he was doing was wrong<br/>23 or improper in any way?<br/>24 A. No.<br/>25 Q. Okay. Now, is it common within your field</p>  | <p>1 other portfolio managers will sometimes do?<br/>2 MR. ROSSETTI: Objection.<br/>3 A. Yes, sometimes.<br/>4 Q. Okay. So when Mr. Nothern delivered the<br/>5 information about what he had heard from<br/>6 Mr. Davis, he didn't tell you or any of the<br/>7 other portfolio managers to whom he was<br/>8 speaking, "Keep this information under your<br/>9 hat, don't share it with anybody else"; he<br/>10 didn't say anything like that, did he?<br/>11 A. No.<br/>12 Q. Okay. Now, you remember that Mr. Rossetti<br/>13 asked you about what Mr. Nothern had told<br/>14 you about who Mr. Davis was, correct?<br/>15 A. Yes.<br/>16 Q. Okay. I want to ask you something that<br/>17 Mr. Rossetti didn't ask you about, which is:<br/>18 Did Mr. Nothern ever tell you that Mr. Davis<br/>19 had access to confidential information?<br/>20 A. No.<br/>21 Q. Okay. So at the time that the fixed-income<br/>22 group was making its decision about making<br/>23 the trade, as far as you were aware, there<br/>24 was no concept that this was somehow, you<br/>25 know, secret, inside information or anything</p> |

28 (Pages 106 to 109)

## **Exhibit X**

**Cited Excerpts from the  
Deposition of Geoffrey Kurinsky  
(September 7, 2006)**

1 UNITED STATES DISTRICT COURT  
2 FOR THE DISTRICT OF MASSACHUSETTS  
3

4 -----x  
5 UNITED STATES SECURITIES AND ) C.A. 05-10983  
6 EXCHANGE COMMISSION, ) (NMG)  
7 Plaintiff, )  
8 ) VOLUME: I  
9 vs. ) PAGES: 1-242  
10 ) EXHIBITS: 1-12  
11 STEVEN E. NOTHERN, )  
12 Defendant. )

13 -----x

14  
15 VIDEOTAPED DEPOSITION OF GEOFFREY  
16 KURINSKY, a witness called on behalf of the  
17 Plaintiff, pursuant to the provisions of the  
18 Massachusetts Rules of Civil Procedure,  
19 before Jill Shepherd, Registered  
20 Professional Reporter and Notary Public, in  
21 and for the Commonwealth of Massachusetts,  
22 at the offices of U.S. Securities and  
23 Exchange Commission, 33 Arch Street, Boston,  
24 Massachusetts, on Thursday, September 7, 2006,  
25 commencing at 10:18 a.m.

Page 110

1 Steve Nothern and --  
 2 **A. It was before.**  
 3 Q. -- Rick's Smith --  
 4 **A. Right.**  
 5 Q. -- telling Cadogan they wanted to purchase  
 6 bonds?  
 7 **A. It was before.**  
 8 Q. So the first statement you heard was Nothern  
 9 making this announcement about what he heard  
 10 from Pete Davis?  
 11 **A. Correct.**  
 12 Q. At this point you are on the phone?  
 13 **A. Right.**  
 14 Q. All right. What's the -- after Nothern  
 15 makes that statement, what's the next thing  
 16 you observe?  
 17 **A. At this point, I'm on the phone and I'm**  
 18 **already aware that the Treasury market is**  
 19 **up.**  
 20 Q. You are seeing some information on your --  
 21 **A. I have a screen so I'm sort of like, oh, I'm**  
 22 **on the phone. I'm thinking, "Something is**  
 23 **going on," so...**  
 24 Q. When you say "the Treasury market is going  
 25 up," what do you mean by that?

Page 111

1 **A. I have a screen that has actual quotes and**  
 2 **the 30-year Treasury bond is up. I don't**  
 3 **know, three-quarters of a point. Something**  
 4 **is happening.**  
 5 Q. All right. As you sit here today, do you  
 6 know how much it was going up or it had gone  
 7 up?  
 8 **A. I think it was three-quarters of a point.**  
 9 Q. After you see your screen and you see the --  
 10 **A. Right.**  
 11 Q. -- the bond going up, what's the next thing  
 12 you recall happening?  
 13 **A. Well, then they're standing up and doing**  
 14 **something, and then I -- that -- the Pete**  
 15 **Davis discussion, and then they are doing**  
 16 **the trade, and I'm saying, you know, "I**  
 17 **could use 10 million."**  
 18 Q. So you are saying "they're standing up," you  
 19 are referring to Steve Nothern --  
 20 **A. Steve Nothern --**  
 21 Q. -- and Rick Smith?  
 22 **A. And John Cadogan is taking instruction.**  
 23 Q. Is John Cadogan standing as well?  
 24 **A. I remember him sitting, but I don't know.**  
 25 Q. What's the discussion that's going on among

Page 112

1 Cadogan, Steve Nothern and Rick Smith at  
 2 this point?  
 3 **A. It's figuring out a number. It's collecting**  
 4 **orders to get to how many did we want to**  
 5 **buy, to -- so John can go buy them.**  
 6 Q. Was there anybody who was taking the lead  
 7 and trying to find out how much everybody  
 8 wanted?  
 9 **A. I mean, not -- it seemed like Steve and Rick**  
 10 **were putting it together.**  
 11 Q. All right. And did there -- after you  
 12 observed this interaction between Nothern,  
 13 Cadogan and Rick Smith, what's the next  
 14 thing you recall occurring?  
 15 **A. John Cadogan executed, you know, the trade.**  
 16 **bought 70 million Treasury bonds.**  
 17 Q. So, by this point, you had heard whatever  
 18 Nothern wanted to purchase, whatever Rick  
 19 Smith wanted to purchase and whatever David  
 20 Kennedy wanted to purchase?  
 21 **A. Right.**  
 22 Q. And you told them, "I wanted to purchase 10  
 23 million"?  
 24 **A. Right.**  
 25 Q. How exactly did you tell them that "I wanted

Page 113

1 to purchase 10 million"?  
 2 **A. I looked at John and said, "I will take 10."**  
 3 Q. When you say, "I will take 10," you were  
 4 intending for him to purchase for you  
 5 10 million Treasury bonds?  
 6 **A. That's correct.**  
 7 Q. You see, we will get this working out at  
 8 some point today.  
 9 After Mr. Nothern had made this  
 10 statement about Peter Davis, did you engage  
 11 in any discussion with anybody else about  
 12 what exactly Davis had said or get any  
 13 clarification or anything like that?  
 14 **A. No.**  
 15 Q. Did you engage in any conversation -- after  
 16 you heard this statement that Nothern said  
 17 about Davis, but before you asked Cadogan or  
 18 anybody else to purchase 10 million, did you  
 19 get involved in any other discussion with  
 20 anybody there about what was going on?  
 21 **A. No.**  
 22 Q. Prior to you indicating to Cadogan that you  
 23 wanted to purchase the 10 million in bonds,  
 24 did you see anything on the news wires  
 25 indicating that the Treasury refunding

29 (Pages 110 to 113)

| Page 198  | Page 200  |
|---|---|
| <p>1 years ago shortly after the events, and I</p> <p>2 believe you said on page 115 of your</p> <p>3 deposition that the market activity</p> <p>4 suggested it was in the public domain?</p> <p>5 <b>A. Right.</b></p> <p>6 Q. Do you recall that?</p> <p>7 <b>A. Yes.</b></p> <p>8 Q. And is that your testimony today?</p> <p>9 <b>A. Yeah. "Suggested," that's good.</b></p> <p>10 Q. So at the time that you heard the</p> <p>11 information from Mr. Nothern and which was</p> <p>12 shortly after you had seen the price</p> <p>13 movement on your screen, you believed that</p> <p>14 the information the Treasury was going to be</p> <p>15 cancelling the long bond was actually -- or</p> <p>16 at least most likely in the public domain at</p> <p>17 that point?</p> <p>18 <b>A. Right.</b></p> <p>19 MR. ROSSETTI: Objection.</p> <p>20 Q. In other words, there was nothing that</p> <p>21 suggested to you that it wasn't public</p> <p>22 information?</p> <p>23 <b>A. Right.</b></p> <p>24 MR. ROSSETTI: Objection.</p> <p>25 Q. Okay.</p>   | <p>1 MR. SHOPE: Okay. That's fine.</p> <p>2 Q. As I said, it's page 162.</p> <p>3 MR. GOLDSTEIN: And if you could</p> <p>4 just rephrase or restate your question,</p> <p>5 again, please.</p> <p>6 MR. SHOPE: Okay.</p> <p>7 Q. And the -- well, first of all, Mr. Kurinsky,</p> <p>8 have you been able to find that? Let me</p> <p>9 pull out my copy of the transcript in case</p> <p>10 we need to.</p> <p>11 <b>A. Yeah, I went through it.</b></p> <p>12 Q. You got it? Okay?</p> <p>13 <b>A. (No audible response.)</b></p> <p>14 Q. Okay. All right. So the -- and it's</p> <p>15 consistent with your memory today that you</p> <p>16 saw the market going up somewhere between</p> <p>17 half and three-quarters of a point?</p> <p>18 MR. ROSSETTI: Objection. I don't</p> <p>19 think that was your question referring to</p> <p>20 this transcript.</p> <p>21 Can we have the question -- I don't</p> <p>22 know if you are going to withdraw the</p> <p>23 question or you are going to proceed with</p> <p>24 the question, but we asked you to look -- to</p> <p>25 have him look at the transcript. You had a</p> |
| Page 199  | Page 201  |
| <p>1 MR. ROSSETTI: Mr. Kurinsky, if you</p> <p>2 would just give me a little time if I need</p> <p>3 to interpose an objection after Mr. Shope --</p> <p>4 THE WITNESS: Okay.</p> <p>5 MR. ROSSETTI: -- asks you a</p> <p>6 question, that would be appreciated.</p> <p>7 Q. And, again, in the transcript that you -- of</p> <p>8 the testimony that you gave when the SEC</p> <p>9 first deposed you five years ago, I believe</p> <p>10 at page 162, your recollection was that the</p> <p>11 market was up around three-quarters of a</p> <p>12 point?</p> <p>13 <b>A. That's correct.</b></p> <p>14 MR. ROSSETTI: I would just ask if</p> <p>15 you directed the witness to the actual</p> <p>16 portion of the transcript. I see you are</p> <p>17 not reading from the transcript --</p> <p>18 MR. SHOPE: Okay. Then --</p> <p>19 MR. ROSSETTI: -- where we purport</p> <p>20 to be in the transcript to something that's</p> <p>21 actually correct as opposed to...</p> <p>22 MR. GOLDSTEIN: I'm sorry, John, I</p> <p>23 would ask if you are going to refer to</p> <p>24 transcript page, at least give the witness a</p> <p>25 chance to get the thing in front of him.</p> | <p>1 question pending. Now you are asking him</p> <p>2 something different. I don't know where you</p> <p>3 are.</p> <p>4 MR. SHOPE: I think it was the same</p> <p>5 question, basically the same question.</p> <p>6 Q. First of all, when you were deposed by the</p> <p>7 Treasury [sic] five years ago --</p> <p>8 MR. ROSSETTI: SEC.</p> <p>9 Q. -- excuse me, by the SEC, the -- in the</p> <p>10 middle of page on 162, line -- line -- lines</p> <p>11 10 through 12, your recollection at that</p> <p>12 time was 30-year Treasuries were up a half</p> <p>13 to three-quarters of a point.</p> <p>14 <b>A. That's correct.</b></p> <p>15 MR. ROSSETTI: Objection.</p> <p>16 Q. Okay. And that's your memory today as well</p> <p>17 correct?</p> <p>18 <b>A. Yes.</b></p> <p>19 Q. Okay. Now, for long bond, a half to a</p> <p>20 three-quarter point, is that a minor</p> <p>21 movement, a significant movement; how does</p> <p>22 that rate in sort of scale?</p> <p>23 MR. ROSSETTI: Objection.</p> <p>24 <b>A. It's meaningful.</b></p> <p>25 Q. It's meaningful?</p>  |

## **Exhibit Y**

**Cited Excerpts from the Deposition of Richard Smith  
(June 19, 2006)**

New York, NY

Page 1

1 UNITED STATES DISTRICT COURT  
2 FOR THE DISTRICT OF MASSACHUSETTS

3 -----X  
4 UNITED STATES SECURITIES AND  
EXCHANGE COMMISSION,

Civil Action No.  
05-10983 (NMG)

5 Plaintiff.

6 v.

7 STEVEN E. NOTHERN,

8 Defendant.  
9 -----X

Volume I

June 19, 2006  
New York, New York

11  
12 Videotape deposition of DAVID R. SMITH, taken on  
13 behalf of the Plaintiff, at the United States Securities and  
14 Exchange Commission, WTC, 3 World Financial Center, Suite  
15 4300, New York, New York, 10281, commencing at 10:20 a.m.,  
16 June 19, 2006, before Anthony Armstrong, a Certified  
17 Shorthand Reporter of the State of New York.  
18  
19  
20  
21  
22  
23  
24  
25

New York, NY

Page 154

1 voice?  
2 A. Yes.  
3 Q. On October 31st, 2001, were you familiar with  
4 Mr. Kennedy's voice?  
5 A. Yes.  
6 Q. On October 31st, 2001, were you familiar with  
7 Mr. Kurinsky's voice?  
8 A. Yes.  
9 Q. After Mr. Nothern made this statement about  
10 the elimination of the thirty year bond, did you hear a  
11 discussion along Mr. Nothern, Mr. Kennedy and  
12 Mr. Kurinsky?  
13 A. I believe they were talking. I don't know  
14 exactly what they were talking about.  
15 Q. And how long did this discussion continue?  
16 A. I'm not sure how long it lasted.  
17 Q. Did there come a point in time when the  
18 discussion ended?  
19 A. The next thing I remember was our trader John  
20 Catigan, who does have a very deep and distinguished  
21 voice, asking for an offering of long bonds of thirty  
22 year securities from Merrill Lynch.  
23 Q. What is it that you heard Mr. Kennedy say?  
24 A. He was calling up Merrill Lynch and asking  
25

Page 155

1 them for an offering of 60 million long bonds, 60 year.  
2 The terminology in the market if you're among two, I'll  
3 say, industry professional, you could say offer 60  
4 bonds and they would know exactly what you meant.  
5 Q. Okay. With that little explanation, can you  
6 tell me exactly what you recall Catigan saying?  
7 A. I recall exactly what I just said to you:  
8 That he asked Merrill Lynch to offer 60 bonds.  
9 Q. How do you know it was Merrill Lynch?  
10 A. You know, at the time I probably didn't know  
11 it was Merrill Lynch.  
12 Q. But did he --  
13 A. Might have known from looking at the light in  
14 front of me, yes.  
15 Q. The panel --  
16 A. He was on the light with Merrill Lynch. That  
17 light would be on in front of me.  
18 Q. I see.  
19 A. Yeah. But I -- you're correct in your comment  
20 of I'm not sure at the time today, you know, what you  
21 knew then versus what you know afterwards. I know  
22 certainly afterwards it was Merrill Lynch. I'm pretty  
23 I at the time it was Merrill Lynch.  
24 Q. And you say offer 60 bonds.  
25 Again, what does that mean?

Page 156

1 A. Offer 60 bonds?  
2 Q. Yes.  
3 A. That's a dealer, Merrill Lynch, somebody who  
4 makes markets in securities. Offer, means you, offer  
5 the bonds to me. Offer me 60 million. Without any  
6 qualifiers, it mean per regular settlement the next  
7 day.  
8 Q. So Catigan is asking -- essentially asking to  
9 buy \$60 million --  
10 A. Exactly.  
11 Q. -- of bonds?  
12 A. Yes.  
13 Q. And how long was that estimate by  
14 Mr. Catigan -- how long after Nothern's statement about  
15 the elimination of the bond was Catigan's statement of  
16 offer 60 bonds?  
17 MR. THEODOROU: Objection.  
18 A. I could say, you know, it was within five  
19 minutes, but I'm not sure of the exact timing of the  
20 sequence. I was not looking at a watch or --  
21 Q. Okay. What did -- what happened next after  
22 you heard Catigan say offer 60 bonds?  
23 A. One of the things I recall about the market  
24 that day is that -- when we came back from the  
25 9:30 meeting the market was rallying. It was contrary

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1 to what I thought the market would do that day.  
2 As managers, one of the things we have to do is  
3 manage our risk exposure. Nobody is right all the time  
4 about markets. They are very humbling experience to work  
5 in the financial markets. And as a point you would say,  
6 that's enough. And one of the things that struck me  
7 about the market between the time of the end, that whole  
8 day, was just how strong the market was. And when you're  
9 looking at the market, it just -- there are times you  
10 look at it and you say to yourself something is going on  
11 here. I don't know what's going on here, but I'm on the  
12 wrong side of this trade, and if I stick with it and  
13 fight the market, the only thing the market does is run  
14 me over and destroy my job.  
15 So there is a time to do analysis, to make  
16 calculated investment decisions, and there are times when  
17 there are things going on in the market you don't  
18 understand. And when I was sitting in there that day,  
19 you know, what I remember is this market is really strong  
20 and I don't know why, and I am one opinion and I am not  
21 right about this opinion. And when you're stubborn and  
22 you're fighting markets, they're a lot bigger than any  
23 one individuals. And that's what I remember about  
24 sitting near those fifteen or 20 minutes, between the  
25 time I came back from the meeting and the time that we

40 (Pages 154 to 157)

| Page 166   | Page 168  |
|--|---|
| <p>1 elimination of the 30 year bond, did you buy any bonds<br/>2 as a result of hearing those rumors?<br/>3 A. I don't recall.<br/>4 Q. The rumors that you did hear prior to<br/>5 October 31st, 2001, over what period of time did<br/>6 they -- had you been hearing those?<br/>7 A. I don't recall.<br/>8 Q. Was it a matter of years you were hearing<br/>9 this?<br/>10 MR. THEODOROU: Objection, asked and<br/>11 answered.<br/>12 A. I don't recall. Yeah.<br/>13 Q. Matter of months?<br/>14 A. I don't recall specifically.<br/>15 Q. Okay. You said there was -- when I was just<br/>16 asking you questions about whether the Nothern<br/>17 statement played a role, you had mentioned something<br/>18 that there was a discussion.<br/>19 What discussion were you referring to?<br/>20 MR. THEODOROU: Objection.<br/>21 A. I don't know what you are talking about.<br/>22 Q. You had -- I thought you had said that there<br/>23 was a discussion about the bond, and I was -- did I not<br/>24 hear that correctly?<br/>25 A. What you're saying is not triggering anything</p> | <p>1 make it 65. I think it was -- I thought it was pretty<br/>2 quick.<br/>3 Q. So a few seconds perhaps?<br/>4 MR. THEODOROU: Objection.<br/>5 A. I would be speculating if I said anything more<br/>6 than what I said I think.<br/>7 Q. Well, after he said offer 60, did you sit<br/>8 there contemplating it or did you immediately react and<br/>9 say offer 65?<br/>10 MR. THEODOROU: Objection.<br/>11 A. I don't recall.<br/>12 Q. After you said make it 65, what did you<br/>13 hear -- did you hear Catigan actually offer 65?<br/>14 A. He asked the salesperson on the line can you<br/>15 make it 65.<br/>16 Q. What was the response?<br/>17 MR. THEODOROU: Objection.<br/>18 A. I don't know. He was on the telephone with<br/>19 the broker. I don't know what was being said on the<br/>20 other end of the line.<br/>21 Q. Did Mr. Catigan take any steps to acknowledge<br/>22 that the -- he had gotten the offer in for the 65 --<br/>23 acknowledge to you?<br/>24 A. I think -- as I said before, what was going on<br/>25 at that point in time was the market was really</p>  |
| Page 167   | Page 169  |
| <p>1 that we have talked about today.<br/>2 Q. Okay.<br/>3 A. Yes.<br/>4 Q. Now, after you said to Mr. Catigan -- withdraw<br/>5 that.<br/>6 When you heard Catigan say -- state in his loud<br/>7 voice buy 60 --<br/>8 A. Offer 60.<br/>9 Q. Offer 60. Where were you?<br/>10 A. Sitting at my desk.<br/>11 Q. And when you told Catigan make it 65, were you<br/>12 seated? Did you stand up?<br/>13 A. I don't recall.<br/>14 Q. How did you communicate that to Catigan?<br/>15 A. Verbally.<br/>16 Q. Did you shout it out make it 65?<br/>17 A. Correct.<br/>18 Q. What's -- what happened after you said make it<br/>19 65?<br/>20 A. He -- I believe he asked the broker-dealer to<br/>21 refresh the offering for an amount of 65 million.<br/>22 Q. How long after he had said offer 60 did he<br/>23 refresh his offer and say make it 65?<br/>24 A. I think when he was saying can you offer me<br/>25 60 million bonds, I kind of looked up and I said, John,</p>  | <p>1 starting to move up pretty rapidly. And I do recall<br/>2 that there was -- you know, sometimes you look at<br/>3 government bond markets, it will say 10 plus 11 on the<br/>4 screen. You say offer a large amount of securities.<br/>5 Say offer them at 11. And using my example, I have no<br/>6 idea what the price was. This is illustrative.<br/>7 I do recall a market that was moving, and I<br/>8 don't think that Merrill Lynch, or whoever the broker<br/>9 was, was very fast at making the offering. Typical in a<br/>10 volatile market the trader is put at risk and they are<br/>11 slower. They want the market to settle down before they<br/>12 make the offering. And as I recall, the market was<br/>13 rallying quite a bit that day. It was at a point where<br/>14 he probably felt that I offer it at X price, by the time<br/>15 you say done, it would be higher.<br/>16 It was one of those times that things were just<br/>17 moving on its own. So I do recall that John was -- John<br/>18 was saying do you have an offering. So it wasn't -- it<br/>19 wasn't like immediate, you know. It wasn't like a calm<br/>20 market. It took some time.<br/>21 Q. Did he get a confirmation, though, about the<br/>22 65?<br/>23 MR. THEODOROU: Objection.<br/>24 Q. Catigan, that is.<br/>25 A. I believe he was offered a price that I</p> |

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New York, NY

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1 that right?  
2 MR. ROSSETTI: Objection.  
3 A. Correct.  
4 Q. You also did not know -- you also did not know  
5 about Treasury embargo regulations in October of 2001,  
6 correct?  
7 A. Correct.  
8 MR. ROSSETTI: Objection.  
9 Q. In fact, my client never said or suggested to  
10 you in any way that Mr. Davis had access to nonpublic  
11 or confidential information; isn't that right?  
12 MR. ROSSETTI: Objection.  
13 A. Can you repeat the question, please?  
14 Q. Mr. Nothern never said or suggested to you  
15 that Mr. Davis had access to nonpublic information;  
16 isn't that right?  
17 A. That is correct, right.  
18 MR. ROSSETTI: Objection.  
19 Q. He also never suggested to you that Mr. Davis  
20 was able to get information ahead of the media --  
21 A. No.  
22 Q. -- from press conferences; isn't that right?  
23 MR. ROSSETTI: Objection.  
24 A. That is correct.  
25 Q. He also suggested to you that Mr. Davis'

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1 contacts in Washington D.C. provided Mr. Davis with  
2 public -- excuse me, with nonpublic or confidential  
3 information; isn't that right?  
4 MR. ROSSETTI: Objection.  
5 A. That is correct.  
6 Q. And Mr. Nothern never said or suggested to you  
7 that Davis had access to any embargo information at  
8 Treasury; isn't that right?  
9 MR. ROSSETTI: Objection.  
10 A. That's correct.  
11 Q. In fact, it's fair to say on  
12 October 31st, 2001 you did not have any idea about how  
13 Treasury made its quarterly refunding announcements to  
14 the press; isn't that right, the details of it?  
15 MR. ROSSETTI: Objection.  
16 A. I did not have detailed information about how  
17 they released the information to the press.  
18 Q. And let's see. And you didn't have any  
19 knowledge as to whether Treasury used embargos in  
20 connection with its quarterly refunding announcements;  
21 isn't that right?  
22 MR. ROSSETTI: Objection.  
23 A. That's correct, yes.  
24 Q. Before October 31st, 2001, you also did not  
25 know about whether Treasury implemented any procedures

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1 to protect the confidential information it released at  
2 quarterly refunding conferences; isn't that right?  
3 MR. ROSSETTI: Objection.  
4 A. Yes, I was not aware of their procedures.  
5 Q. Getting back to your own understanding about  
6 the use of embargos by the government.  
7 Your understanding again comes from that  
8 television program that you watched about the Department  
9 of Labor and how it handled employment statistics; is  
10 that right?  
11 MR. ROSSETTI: Objection.  
12 A. That was my assumption of how it was handled  
13 by the government.  
14 Q. Your understanding was based on the -- the  
15 educational television show --  
16 MR. ROSSETTI: Objection.  
17 Q. -- that you watched?  
18 MR. ROSSETTI: You said that like three  
19 times now, Nick.  
20 MR. THEODOROU: That's the pot calling the  
21 kettle black.  
22 MR. ROSSETTI: Yes, but you have a plane  
23 to catch right now.  
24 A. Yes, it's my understanding. I want -- I'm  
25 sorry. I'm getting tired here. I want to make sure I

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1 answer your question appropriately.  
2 Will you please repeat it?  
3 BY MR. THEODOROU:  
4 Q. Yes. What is your understanding about the use  
5 of embargos by the Department of Labor based on an  
6 educational television program that you saw?  
7 A. Yes.  
8 MR. ROSSETTI: Objection.  
9 VIDEOGRAPHER: The time is 6:20 p.m. This  
10 ends Tape No. 6 of the videotape deposition of  
11 David R. Smith.  
12 (There was a recess.)  
13 \*\*\*\*\*  
14 THE VIDEOGRAPHER: The time is 6:22 p.m.  
15 This is Tape No. 7 of the videotape deposition  
16 of David R. Smith.  
17 BY MR. THEODOROU:  
18 Q. Directing your attention to the morning of  
19 October 31st, 2001. Before Mr. Nothern ever mentioned  
20 any message from Mr. Davis, you yourself that morning  
21 noticed -- you were monitoring activity in the bond  
22 market that morning, correct?  
23 A. Correct.  
24 Q. And you noticed that the market was trading  
25 higher and rallying, correct?

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|--|--|
| <p>1 A. Yes.</p> <p>2 Q. When we say the market, we are talking about</p> <p>3 the 30 year long bond, correct?</p> <p>4 A. When the market trades higher, typically the</p> <p>5 long bond will trade -- it has the greatest level of</p> <p>6 interest rate sensitivity. I believe the whole market</p> <p>7 was trading higher.</p> <p>8 Q. In fact, there have been talk in the</p> <p>9 marketplace before October 31st about the elimination</p> <p>10 of the long bond; isn't that right?</p> <p>11 MR. ROSSETTI: Objection.</p> <p>12 A. I had heard that comment in the past. I don't</p> <p>13 recall exactly when I heard it.</p> <p>14 Q. Is it fair to say that you heard that comment</p> <p>15 before October 31st?</p> <p>16 A. I believe I did hear that comment before</p> <p>17 October 31st, yes.</p> <p>18 Q. Just so we are accurate: What did you hear</p> <p>19 about the market and the long bond?</p> <p>20 A. When?</p> <p>21 Q. Before October 31st.</p> <p>22 A. I'd heard about the potential lesser -- lower</p> <p>23 level of issuance of the 30 year bond or the possible</p> <p>24 stopping -- stopping of auctions of the 30 year bond.</p> <p>25 I don't know if that was from Treasury strategists in</p> | <p>1 Q. He -- I believe he never sat down.</p> <p>2 So the question was, where was Mr. Nothern when</p> <p>3 he spoke those words you just testified to?</p> <p>4 I believe that he was -- I believe when he came</p> <p>5 back to the desk, he -- I believe he never sat down. So</p> <p>6 he either checked his messages or picked up the phone</p> <p>7 when he was standing.</p> <p>8 A. Yes.</p> <p>9 Q. And there he was standing here and he</p> <p>10 mentioned he was standing approximately here.</p> <p>11 Now, when you testified at that time you were</p> <p>12 speculating as to when you said I believe, you were</p> <p>13 speculating as to whether he was sitting down or standing</p> <p>14 up, correct?</p> <p>15 MR. ROSSETTI: Objection.</p> <p>16 Q. Isn't that the fair reading of your deposition</p> <p>17 testimony on that day that when you say I believe?</p> <p>18 MR. ROSSETTI: Objection.</p> <p>19 A. I believe what I would interpret to mean there</p> <p>20 is a good probability of, but it's just -- it's not as</p> <p>21 strong of a statement as I remember exactly. It's I</p> <p>22 recall with a high probability, what is are the words I</p> <p>23 would use.</p> <p>24 Q. Now, when Mr. Nothern spoke to you about what</p> <p>25 Mr. Davis had said --</p> |
| Page 255   | Page 257   |
| <p>1 the newspapers, but it was a story that was around.</p> <p>2 Q. Given your observation of the bond market on</p> <p>3 October 31st, 2001, did you believe that the</p> <p>4 information that Mr. Davis provided to Mr. Nothern was</p> <p>5 already public?</p> <p>6 MR. ROSSETTI: Objection.</p> <p>7 A. I don't know.</p> <p>8 Q. You know, earlier today you were asked by</p> <p>9 Mr. Rossetti whether Mr. Nothern was sitting down or</p> <p>10 standing up when he spoke to you.</p> <p>11 Do you remember that?</p> <p>12 A. Yes, I recall that.</p> <p>13 Q. Now, let's turn to the exhibit of your</p> <p>14 transcript. That is Exhibit 6. And again, turn to</p> <p>15 page 61.</p> <p>16 A. Okay. I'm on page 61.</p> <p>17 Q. Right. Now, if you turn to line 13 and the</p> <p>18 question Mr. Rossetti read to you: Where was</p> <p>19 Mr. Nothern when he spoke these words you just</p> <p>20 testified to?</p> <p>21 I believe that he was -- I believe when he came</p> <p>22 back to his desk - this was your response - he believe he</p> <p>23 never sat down.</p> <p>24 MR. ROSSETTI: No. He -- I believe he</p> <p>25 never.</p>  | <p>1 A. I'm sorry. Can you start again? I'm spacing</p> <p>2 out. I'm tired.</p> <p>3 Q. When Mr. Nothern spoke to you about what</p> <p>4 Mr. Davis said?</p> <p>5 A. Yes.</p> <p>6 Q. He didn't lower his voice or whisper the</p> <p>7 information, did he?</p> <p>8 A. No. Yeah.</p> <p>9 Q. In fact, he didn't appear concerned about what</p> <p>10 he was saying to you, did he?</p> <p>11 MR. ROSSETTI: Objection.</p> <p>12 A. I would share that opinion, yes.</p> <p>13 Q. In fact, did you see anything that was</p> <p>14 different in his demeanor from the way he usually</p> <p>15 behaved when he spoke to you?</p> <p>16 MR. ROSSETTI: Objection.</p> <p>17 A. No. It was quite similar to his usual</p> <p>18 demeanor.</p> <p>19 Q. Did he appear to be concerned about what he</p> <p>20 was doing?</p> <p>21 A. No.</p> <p>22 Q. In fact, Mr. Rossetti asked you about the</p> <p>23 level of his voice when he spoke to you. Do you</p> <p>24 remember that, the level of Mr. Nothern's voice?</p> <p>25 A. I don't recall that specific question.</p>  |

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## **Exhibit Z**

**Cited Excerpts from the Deposition of Jeffry Davis  
(May 1, 2008)**

1 UNITED STATES DISTRICT COURT  
2 DISTRICT OF MASSACHUSETTS  
3 -----X  
4 SECURITIES AND EXCHANGE :  
5 COMMISSION, :  
6 Plaintiff, :  
7 v. : No. 05-10983 (NMG)  
8 STEVEN E. NOTHERN, :  
9 Defendant. :

10 -----X

11 Washington, D.C.

12 Thursday, May 1, 2008

13 Deposition of JEFFREY L. DAVIS, a witness  
14 herein, called for examination by counsel for Defendant in  
15 the above-entitled matter, pursuant to notice, the witness  
16 being duly sworn by DENNIS A. DINKEL, a Notary Public in and  
17 for the District of Columbia, taken at the offices of Foley  
18 Hoag LLP, 1875 K Street, N.W., Washington, D.C. at  
19 9:45 a.m., Thursday, May 1, 2008, and the proceedings being  
20 taken down by Stenotype by DENNIS A. DINKEL, FAPR, CRR, and  
21 transcribed under his direction.

22

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1 October.  
 2 BY MR. SHOPE:  
 3 Q. I understand.  
 4 A. And I think I point out in my report I  
 5 looked at some of the other refunding days in 2001  
 6 and found that there were fairly large movements on  
 7 those days before the announcement as well.  
 8 Q. Now, did you -- you looked at three other  
 9 refunding days, right?  
 10 A. Yes.  
 11 Q. Did you consider that three was a  
 12 statistically meaningful data set?  
 13 A. No. I didn't think that at all. I  
 14 thought it was simply a small sample to take a look  
 15 at and see how they compare.  
 16 Q. It doesn't really tell you anything  
 17 scientific to look at three days, right?  
 18 MS. WILLIAMS: Objection.  
 19 THE WITNESS: No, but it does tell you on  
 20 at least one of the immediately preceding three  
 21 funding days there were refunding price changes early  
 22 on.

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1 MR. SHOPE: Could you read back his answer  
 2 to me?  
 3 THE REPORTER: "Answer: No, but it does  
 4 tell you on at least one of the immediately preceding  
 5 three funding days there were refunding price changes  
 6 early on."  
 7 MR. ROSSETTI: John, when you find a  
 8 convenient time to take a break, if we could?  
 9 MR. SHOPE: Off the record.  
 10 (Discussion off the record.)  
 11 BY MR. SHOPE:  
 12 Q. So I want to get back to the choice of  
 13 October 31 as the benchmark, or as the -- I'm sorry.  
 14 The average one-minute return of October 31 as the  
 15 benchmark.  
 16 Was there anything in the literature that  
 17 told you you should pick just that day as the  
 18 benchmark?  
 19 A. No. I don't think there was anything of  
 20 particular guidance in the literature. As I said I  
 21 chose that day because I thought it was more  
 22 conservative in the sense that the return that is

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1 observed at 9:57 would be even -- would be far more  
 2 significant than it is with this benchmark.  
 3 Q. But if there were smaller price spikes  
 4 before 9:57 your choice of that benchmark had the  
 5 effect of making them seem less significant, correct?  
 6 MS. WILLIAMS: Objection.  
 7 THE WITNESS: Yes. But I explained -- I  
 8 point out in my report -- maybe I should look for  
 9 it --  
 10 Footnote 11 on page 9. I'm not trying to  
 11 hide anything. I point out it should be noted the  
 12 standard deviation returns on October 31 was nearly  
 13 10 times larger than the standard deviation the  
 14 previous day and more than twice larger the --  
 15 MS. WILLIAMS: You have to speak up and  
 16 slow down.  
 17 THE WITNESS: I'm forgetting I'm reading  
 18 for a reporter here.  
 19 It should be noted that the standard  
 20 deviation on October 31, 2001 was nearly 10 times  
 21 larger than the standard deviation of the previous  
 22 day and more than twice as large as any other day

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1 during October 2001. And the average return was also  
 2 much larger than any other day in 2001.  
 3 Thus, abnormal for return -- found to be  
 4 significantly positive using the standard deviation  
 5 average return for October 31 would also be  
 6 significant if we used the standard deviation average  
 7 return from the prior day or any other day in October  
 8 2001.  
 9 So I'm pointing out what the effect of  
 10 using the average return and the standard deviation  
 11 October 31 would be.  
 12 BY MR. SHOPE:  
 13 Q. Did you run any computations about how  
 14 many abnormal returns there would have been before  
 15 9:57 had you used a different benchmark?  
 16 A. No, I didn't.  
 17 Q. Was there any reason why you didn't other  
 18 than the reasons you've already given us? The  
 19 reasons you already have given us for selecting  
 20 October 31?  
 21 A. Are there any other reasons why I selected  
 22 October 31.

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1 Q. Any other reasons why you didn't run --  
 2 just out of curiosity, perhaps to see what the data  
 3 would show had you used as a benchmark an average  
 4 one-minute return broader than just October 31?  
 5 A. Well, it's not any secret. If you look at  
 6 the charts, for example Exhibit 11, no, it doesn't  
 7 tell you exactly what it would be; but it is clear  
 8 that some of those prior to 9:58 -- I'm sorry. Go  
 9 back to the Exhibit 7.  
 10 You can see that there are some candidates  
 11 that probably would have been significant had I used  
 12 different average returns and different standard  
 13 deviations. There are one, two, three possibly four,  
 14 it looks like to me.  
 15 Q. So, for example, 9:30, if you used a  
 16 benchmark broader than October 31, there would have  
 17 been a spike at 9:30 that would have been  
 18 significant, right?  
 19 A. That's possible, yes.  
 20 Q. And same again at 9:35, right?  
 21 A. 9:37 it looks like.  
 22 Q. 9:37. It's hard to read the precise time

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1 on these charts.  
 2 A. Yes. That's correct. But what you'd also  
 3 see is that the one at 9:57 and the ones following  
 4 9:57 would shoot through the top of this chart.  
 5 Q. Okay.  
 6 A. And my point was simply that if the  
 7 information had been reflected in the price of the  
 8 bond prior to 9:57, then what happened at 9:57 we  
 9 wouldn't have seen.  
 10 Q. But if you were a market observer at,  
 11 let's say, 9:42 or 9:43, you wouldn't know what was  
 12 going to happen 10 or 15 minutes later? You would  
 13 only know what had happened in the preceding month  
 14 and in the preceding hour and a half, right?  
 15 MS. WILLIAMS: Objection.  
 16 THE WITNESS: I don't quite understand  
 17 what my analysis has to do with a market observer  
 18 looking at this.  
 19 BY MR. SHOPE:  
 20 Q. Sure. Okay. So the -- well, let me ask  
 21 you --  
 22 A. I'm not putting myself in the place of a

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1 market observer. I'm looking at what happened after  
 2 the fact.  
 3 Q. Okay. So -- but if those spikes at 9:30  
 4 and 9:35 became significant with a different  
 5 analysis, that would suggest -- would it not -- that  
 6 perhaps there were people acting on the information  
 7 as soon as 9:30 or 9:35? Causing the price to go up?  
 8 Right?  
 9 MS. WILLIAMS: Objection.  
 10 THE WITNESS: What it would tell me is  
 11 simply that there were significant price reactions or  
 12 price increases at those times.  
 13 BY MR. SHOPE:  
 14 Q. And do you have any explanation for those  
 15 price increases other than people knowing about -- in  
 16 advance -- about the decision to discontinue the  
 17 bond?  
 18 A. I don't really have any explanation  
 19 whatsoever for those. My point is simply had those  
 20 resulted in the information being reflected in the  
 21 price of the bond, then at 9:57, we wouldn't have  
 22 seen this happen. We wouldn't have seen these bigger

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1 spikes followed by a series of even larger spikes.  
 2 Q. Were you aware that Peter Davis was  
 3 alleged to have called several market participants  
 4 starting around 9:30 to report the decision to  
 5 discontinue the long bond?  
 6 A. Several market participants? I don't  
 7 recall that from the complaint. I can look at it if  
 8 you like. I do recall that he made a phone call to  
 9 Mr. Nothern.  
 10 Q. Do you know where Mr. Nothern was in the  
 11 number of calls that were placed?  
 12 MS. WILLIAMS: Objection.  
 13 THE WITNESS: No, I don't.  
 14 BY MR. SHOPE:  
 15 Q. So you don't know whether he called  
 16 Mr. Nothern first, second, third, seventh, eighth,  
 17 fifteenth?  
 18 A. I don't recall that. I don't know if  
 19 that's in the complaint or not.  
 20 Q. You do recall it was alleged that  
 21 Mr. Nothern -- Peter Davis, the other -- one of the  
 22 other Davises in the case -- you do recall it was

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|--|---|
| <p>1 would have increased the number of statistically</p> <p>2 abnormal returns on October 31, correct?</p> <p>3 A. In the same way that if I used a different</p> <p>4 average return, yes.</p> <p>5 Q. Do you know what kurtosis is?</p> <p>6 K-u-r-t-o-s-i-s.</p> <p>7 A. Yes. I'm having trouble remembering the</p> <p>8 definition of it, though. It has to do with the</p> <p>9 shape of the distribution, and I didn't make any</p> <p>10 adjustments for kurtosis.</p> <p>11 Q. Can you give me your best explanation of</p> <p>12 what kurtosis is?</p> <p>13 A. I think I may be confusing it with</p> <p>14 something else. I'm thinking about the possibility</p> <p>15 of a bimodal distribution, but that won't be the case</p> <p>16 here.</p> <p>17 So no, I don't have a good definition for</p> <p>18 you.</p> <p>19 Q. At this point, you can't remember what it</p> <p>20 means?</p> <p>21 A. No. I can't.</p> <p>22 Q. Okay. I apologize, maybe you said it, but</p>   | <p>1 A. Yes.</p> <p>2 Q. And that shows spikes at 9:25 and 9:35 as</p> <p>3 well, correct?</p> <p>4 A. It's after 9:25 --</p> <p>5 Q. I'm sorry?</p> <p>6 A. Looks like 9:26.</p> <p>7 Q. 9:27 and 9:35?</p> <p>8 A. 9:36.</p> <p>9 Q. 9:36. In the neighborhood of the two</p> <p>10 spikes that we saw with respect to the 30-year bond</p> <p>11 information, correct?</p> <p>12 MS. WILLIAMS: Objection.</p> <p>13 THE WITNESS: In the neighborhood?</p> <p>14 BY MR. SHOPE:</p> <p>15 Q. Well, within a minute or two?</p> <p>16 MS. WILLIAMS: Objection.</p> <p>17 THE WITNESS: Well, where's -- I don't see</p> <p>18 a 9:27 spike.</p> <p>19 BY MR. SHOPE:</p> <p>20 Q. Okay. I'm sorry. If we go back to 9 --</p> <p>21 Exhibit 7, that shows one at 9:30, and then maybe</p> <p>22 around 9:37, right?</p>  |
| Page 135   | Page 137  |
| <p>1 you didn't make any adjustment for kurtosis?</p> <p>2 A. No, I did not.</p> <p>3 Q. By the way, getting back to the Exhibit 7</p> <p>4 where we talked about the price spikes at 9:30 and</p> <p>5 9:35 and how they would have become significant had</p> <p>6 you used a broader benchmark, I asked you about the</p> <p>7 possibility of the -- of a spike at 9:37 being</p> <p>8 explained by purchases by Goldman Sachs; you recall</p> <p>9 that?</p> <p>10 A. Yes.</p> <p>11 Q. Did you read anything about any rumors on</p> <p>12 the Chicago Board of Trade?</p> <p>13 MS. WILLIAMS: Objection.</p> <p>14 THE WITNESS: There was -- there may have</p> <p>15 been something in the Goldman Sachs chronology. I</p> <p>16 don't recall exactly what was in there. That would</p> <p>17 have been the only place I would have seen anything I</p> <p>18 think.</p> <p>19 BY MR. SHOPE:</p> <p>20 Q. So if we went to -- if we go to the</p> <p>21 exhibits that relate to the -- let's say we go to</p> <p>22 Exhibit 13, you see Exhibit 13?</p> | <p>1 A. Exhibit 7?</p> <p>2 Q. Yes.</p> <p>3 A. 9 -- looks like maybe 9:31. I can't tell</p> <p>4 for sure. 9:37 or 38.</p> <p>5 Q. Okay. Then this one shows -- okay. This</p> <p>6 one shows, Exhibit 13 shows a spike around 9:27.</p> <p>7 Would you agree 9:27 approximately?</p> <p>8 A. 9:27, 9:28 maybe.</p> <p>9 Q. 9:28. Okay.</p> <p>10 There's?</p> <p>11 Q. In this, the village chief Kapundwe was</p> <p>12 entrusted by a man from a neighboring village,</p> <p>13 Busangu, with a young sheep.</p> <p>14 And one day, Chief Kapundwe's dog was</p> <p>15 found eating the sheep. The dog had never attacked a</p> <p>16 sheep, and nobody had seen whether the dog killed the</p> <p>17 sheep which had probably died a natural death; and</p> <p>18 yet Kapundwe, the chief, who was taking care of the</p> <p>19 sheep, gave his friend a sheep in compensation, and</p> <p>20 then another, finally a third, and for good measure a</p> <p>21 hundred francs, as well.</p> <p>22 And it goes on, why did he do this?</p> |

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| <p>1 Q. That's on the Chicago Board of Trade?</p> <p>2 A. Yes.</p> <p>3 Q. And this shows an abnormal return just</p> <p>4 about 10:15, an abnormal one-minute return that's</p> <p>5 greater than the one that's shown here at 9:59,</p> <p>6 correct?</p> <p>7 A. Yes.</p> <p>8 Q. But the fact that there's a bigger one at</p> <p>9 10:15 does not disprove your opinion that there was</p> <p>10 market action on the information at 9:59, correct?</p> <p>11 MS. WILLIAMS: Objection.</p> <p>12 THE WITNESS: That there was what?</p> <p>13 BY MR. SHOPE:</p> <p>14 Q. Market action on the information?</p> <p>15 A. What do you mean by market action?</p> <p>16 Q. Price action. Are you familiar with the</p> <p>17 term price action?</p> <p>18 A. No.</p> <p>19 Q. Okay. We'll go back then. Would you say</p> <p>20 that Exhibit 13 confirms your opinion that there was</p> <p>21 reflection of the decision to discontinue the bond in</p> <p>22 the vicinity of 9:57?</p>                                       | <p>1 BY MR. SHOPE:</p> <p>2 Q. The information we've been talking about</p> <p>3 all day, the discontinuance of the 30-year bond.</p> <p>4 A. But --</p> <p>5 MS. WILLIAMS: Objection.</p> <p>6 THE WITNESS: -- I mean there has to be --</p> <p>7 what you were saying before was that there was</p> <p>8 information being disseminated or spread on the</p> <p>9 Chicago Board of Trade.</p> <p>10 BY MR. SHOPE:</p> <p>11 Q. Yes. If you assume that that were true.</p> <p>12 A. In general terms, the mere finding of a</p> <p>13 larger significant return subsequent to a significant</p> <p>14 return does not mean that that doesn't reflect --</p> <p>15 that that isn't the market reflecting information;</p> <p>16 but I think you have to look at the broader pattern</p> <p>17 as well.</p> <p>18 You have to look at -- there's a whole</p> <p>19 series of significant returns that start at 9:59.</p> <p>20 Some of those are even larger than the 9:59 return.</p> <p>21 Q. Sure.</p> <p>22 A. Also, we have information I found looking</p> |
| Page 151  | Page 153   |
| <p>1 MS. WILLIAMS: Objection.</p> <p>2 THE WITNESS: Yes. It shows that there</p> <p>3 was a significant price increase at 9:59.</p> <p>4 BY MR. SHOPE:</p> <p>5 Q. Yes.</p> <p>6 A. If that's what you are meaning, yes.</p> <p>7 Q. Yes. That conclusion is in no way</p> <p>8 diminished by the fact that there's an even bigger</p> <p>9 spike at about 10:15; is that true?</p> <p>10 MS. WILLIAMS: Objection.</p> <p>11 THE WITNESS: That's correct. In fact, I</p> <p>12 would suggest that the series of significant spikes</p> <p>13 following the 9:59 probably strengthen that</p> <p>14 conclusion.</p> <p>15 BY MR. SHOPE:</p> <p>16 Q. Okay. So likewise, the fact that there is</p> <p>17 a spike at 9:59 that is bigger than the one at 9:37</p> <p>18 does not disprove the possibility that the</p> <p>19 information was being reflected at 9:37, true?</p> <p>20 MS. WILLIAMS: Objection.</p> <p>21 THE WITNESS: The information was being</p> <p>22 reflected -- what information are we talking about?</p> | <p>1 at the spreads in the bond market which show a</p> <p>2 significant widening of the spread at approximately</p> <p>3 10:03 which is another indication that the market --</p> <p>4 that the information is being reflected in the price</p> <p>5 of the bond.</p> <p>6 Q. If we turn the page to Exhibit 14 to your</p> <p>7 exhibit -- to your report, so Exhibit 14 to Exhibit</p> <p>8 1, this also shows spikes at around 9:26 and around</p> <p>9 9:36, right?</p> <p>10 MS. WILLIAMS: Objection.</p> <p>11 THE WITNESS: Around, yes. Looks like</p> <p>12 9:27, 9:37, roughly.</p> <p>13 BY MR. SHOPE:</p> <p>14 Q. But in other words -- well, but when you</p> <p>15 say -- when you say around, those are meaningful --</p> <p>16 the proximity of the spikes on the two charts is</p> <p>17 meaningful, right?</p> <p>18 MS. WILLIAMS: Objection.</p> <p>19 THE WITNESS: The proximity of the spikes</p> <p>20 is meaningful; is that the way you put it?</p> <p>21 BY MR. SHOPE:</p> <p>22 Q. Let's put it this way: They both have a</p>        |

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| <p style="text-align: right;">Page 154</p> <p>1 spike at 9:26; is that right?</p> <p>2 A. At approximately 9:26, yes.</p> <p>3 Q. And they both have -- so that suggests</p> <p>4 that the spike is not just random? It is showing up</p> <p>5 in multiple securities, right?</p> <p>6 MS. WILLIAMS: Objection.</p> <p>7 THE WITNESS: Well, the option is a</p> <p>8 derivative of the future; so it is not surprising</p> <p>9 that what happens in the market -- in the options</p> <p>10 market would largely reflect what's going on in the</p> <p>11 futures market.</p> <p>12 BY MR. SHOPE:</p> <p>13 Q. And just to follow up, Exhibit 13 shows a</p> <p>14 spike at 9:35 and Exhibit 14 shows a spike maybe at</p> <p>15 9:36, right?</p> <p>16 A. The times are approximate, yes.</p> <p>17 Q. So it looks like at both 9:25 and 9:35,</p> <p>18 9:36, both the future and the -- the bond future Open</p> <p>19 Outcry and the bond future Electronic are moving in</p> <p>20 tandem?</p> <p>21 MS. WILLIAMS: Objection.</p> <p>22 THE WITNESS: I apologize. Misspoke a few</p> | <p style="text-align: right;">Page 156</p> <p>1 THE WITNESS: -- there are similar spikes</p> <p>2 in both of them.</p> <p>3 BY MR. SHOPE:</p> <p>4 Q. And then if we go to Exhibit 16 to your</p> <p>5 report, there is -- this is the call options.</p> <p>6 There's a spike at -- is that 9:36? 9:37? 9:36.</p> <p>7 A. Looks like about 9:37. One or the other.</p> <p>8 Q. Maybe somewhere in between the two?</p> <p>9 A. Uh-huh.</p> <p>10 Q. That shows a spike that's almost as big</p> <p>11 as -- first of all, that spike is bigger than the one</p> <p>12 that's in the vicinity of 9:57, right?</p> <p>13 MS. WILLIAMS: Objection.</p> <p>14 THE WITNESS: Yes, it is.</p> <p>15 BY MR. SHOPE:</p> <p>16 Q. So --</p> <p>17 A. If you're talking about within a minute or</p> <p>18 two, yes. There's a larger spike at 10:04.</p> <p>19 Q. But the one at 9:37 is almost as big as</p> <p>20 the one at 10:04, right?</p> <p>21 A. Almost as big, yes.</p> <p>22 Q. Okay.</p>  |
| <p style="text-align: right;">Page 155</p> <p>1 minutes ago. We are simply looking at the Open</p> <p>2 Outcry versus the Electronic market, which I would</p> <p>3 expect to be -- to move very much the same.</p> <p>4 BY MR. SHOPE:</p> <p>5 Q. Okay. And then if we go to Exhibit 15 to</p> <p>6 your report, so Exhibit 15 to Exhibit 1, this is the</p> <p>7 Open Outcry; and again there's a spike at 9:26,</p> <p>8 right?</p> <p>9 A. Around 9:26, yes.</p> <p>10 Q. 9:26. Maybe 9:26 30 seconds; and then</p> <p>11 there's one at -- around 9:36, right?</p> <p>12 A. Around there, yes.</p> <p>13 Q. Again movement in tandem in the 9:26 and</p> <p>14 9:36 time frames in parallel with the bond future,</p> <p>15 both Open Outcry and Electronic?</p> <p>16 A. This is a different contract here in</p> <p>17 Exhibit 15. It is the March contract.</p> <p>18 Q. Yes. Okay. But it seems as if the market</p> <p>19 in these different instruments is moving in tandem on</p> <p>20 those times?</p> <p>21 A. There are --</p> <p>22 MS. WILLIAMS: Objection.</p>         | <p style="text-align: right;">Page 157</p> <p>1 A. But there's nothing at 9:26.</p> <p>2 Q. Moving in tandem around the 9:37 time</p> <p>3 frame but nothing at 9:26; fair to say?</p> <p>4 A. Yes. Similar spike. 9:37. Around 9:37.</p> <p>5 Q. Okay. If we go to the Exhibit 17 to your</p> <p>6 report, that's futures call options strike price 109,</p> <p>7 so that's a slightly different instrument, right?</p> <p>8 A. Yes. It's another call option with a</p> <p>9 different strike price.</p> <p>10 Q. And that also shows a spike at 9:36 or</p> <p>11 9:37 that's bigger than the spike at 9:59, right?</p> <p>12 A. Yes. But not as big as the one shortly</p> <p>13 after 10:00.</p> <p>14 Q. Yeah. And even under the method that you</p> <p>15 used, the one at 9:37 was significant, right? Or</p> <p>16 9:36 or 37?</p> <p>17 A. Yes.</p> <p>18 Q. All right.</p> <p>19 A. But again, the standard deviations in the</p> <p>20 options are very small, largely because there are</p> <p>21 either gaps in trading or just no price changes over</p> <p>22 significant periods of time.</p> |

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| <p style="text-align: right;">Page 158</p> <p>1 So that tends to bias the standard</p> <p>2 deviation or at least produce a smaller standard</p> <p>3 deviation, which makes it much easier for these</p> <p>4 significant returns to show up.</p> <p>5 Q. You didn't go back and see what a broader</p> <p>6 benchmark would have done for the bond futures, did</p> <p>7 you?</p> <p>8 A. I didn't what?</p> <p>9 Q. Just to clarify, you didn't go back and</p> <p>10 look to see whether or not taking the month of</p> <p>11 October as a whole for your average, you didn't go</p> <p>12 back to see whether or not that would have an effect</p> <p>13 on the size of your benchmark for purposes of these</p> <p>14 different --</p> <p>15 A. No --</p> <p>16 Q. -- calls and options --</p> <p>17 MS. WILLIAMS: Objection.</p> <p>18 THE WITNESS: No, I didn't. But I assume</p> <p>19 it would have a similar effect.</p> <p>20 BY MR. SHOPE:</p> <p>21 Q. In other words, there would be more</p> <p>22 significant spikes?</p> | <p style="text-align: right;">Page 160</p> <p>1 Q. And, in fact, that spike at 9:37 on</p> <p>2 Exhibit 19 to your report is bigger than the spike at</p> <p>3 9:57?</p> <p>4 A. Yes. But nowhere near the spike at 10:03.</p> <p>5 Q. And if we go to Exhibit 20 to your report,</p> <p>6 we see -- these are put options, right?</p> <p>7 A. Correct.</p> <p>8 Q. So you would expect their price movement</p> <p>9 to move inversely to the call options, right?</p> <p>10 A. That's correct.</p> <p>11 Q. Okay. So if we go to 9:26, there's a</p> <p>12 spike, right?</p> <p>13 A. Going the wrong way, though.</p> <p>14 Q. I'm sorry. Going the wrong way. Yes.</p> <p>15 But there's a spike at 9:31 that would</p> <p>16 suggest parallel movement, right?</p> <p>17 MS. WILLIAMS: Objection.</p> <p>18 THE WITNESS: Well, yes; but it sort of</p> <p>19 cancels out the previous spike that went in the wrong</p> <p>20 direction.</p> <p>21 BY MR. SHOPE:</p> <p>22 Q. Okay. And then there's a spike at 9:36,</p> |
| <p style="text-align: right;">Page 159</p> <p>1 A. That's correct.</p> <p>2 Q. We go to Exhibit 18, Exhibit 18 to your</p> <p>3 report, that again shows a spike around 9:37, maybe</p> <p>4 9:38, right?</p> <p>5 MS. WILLIAMS: Objection.</p> <p>6 THE WITNESS: Yes. It is a rather small</p> <p>7 spike, but it is a spike.</p> <p>8 BY MR. SHOPE:</p> <p>9 Q. If we used the broader benchmark, that</p> <p>10 would have become significant, right?</p> <p>11 A. It probably would be significant, yes.</p> <p>12 Q. Okay.</p> <p>13 A. Again nothing at 9:26, though.</p> <p>14 Q. Why don't we turn the page to Exhibit 19.</p> <p>15 And that shows a spike at 9:26, 9:27, right?</p> <p>16 A. Yes.</p> <p>17 Q. If you used the broader benchmark, that</p> <p>18 would have been significant; true?</p> <p>19 A. Most likely, yes.</p> <p>20 Q. And then at 9:37, there's a spike, a</p> <p>21 significant spike, right?</p> <p>22 A. Yes.</p>   | <p style="text-align: right;">Page 161</p> <p>1 9:37. That's moving in the right direction, right?</p> <p>2 MS. WILLIAMS: Objection.</p> <p>3 THE WITNESS: Yes.</p> <p>4 BY MR. SHOPE:</p> <p>5 Q. And again if you had used the broader</p> <p>6 benchmark, that would have been a significant spike,</p> <p>7 true?</p> <p>8 MS. WILLIAMS: Objection.</p> <p>9 THE WITNESS: That's likely it would have</p> <p>10 been, yes.</p> <p>11 BY MR. SHOPE:</p> <p>12 Q. In fact, again, that spike is -- the 9:36,</p> <p>13 9:37, that's almost as big as the one that's just</p> <p>14 before 10:00; true?</p> <p>15 A. That's true.</p> <p>16 Q. And then if we turn the page to Exhibit</p> <p>17 21, again this is puts that are moving inversely to</p> <p>18 the -- one would expect to move inversely to the</p> <p>19 calls, right?</p> <p>20 A. Yes.</p> <p>21 Q. Okay. And again there's a spike at -- in</p> <p>22 the 9:26, 9:27 time frame, correct?</p>  |

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| <p style="text-align: right;">Page 162</p> <p>1 A. Yes.</p> <p>2 Q. And if you used the broader benchmark,</p> <p>3 would that have been significant?</p> <p>4 A. I can't say for sure. Probably, but I</p> <p>5 can't say for sure.</p> <p>6 Q. And then if we go to -- looks like just</p> <p>7 around 9:39, there's another spike, right?</p> <p>8 A. Yes.</p> <p>9 Q. And that -- that certainly would have been</p> <p>10 significant had you used the broader benchmark,</p> <p>11 right?</p> <p>12 A. Yes. I think it would have been.</p> <p>13 Q. Yes. That -- that is again bigger than</p> <p>14 the spike at just before 10:00, true?</p> <p>15 A. Yes. But again not as big as the</p> <p>16 subsequent spikes.</p> <p>17 Q. Okay. And if we go to Exhibit 22, we see</p> <p>18 a spike -- there's a spike at about -- again this is</p> <p>19 a put that's moving inversely to the calls, right?</p> <p>20 A. Yes.</p> <p>21 Q. Okay. So we see a spike at 9 -- maybe</p> <p>22 9:28?</p> | <p style="text-align: right;">Page 164</p> <p>1 going in the wrong direction.</p> <p>2 Q. So the 9:44 is immediately on the heels of</p> <p>3 the posting to the web site that you assumed to have</p> <p>4 occurred at 9:43, right?</p> <p>5 A. I think that's the correct time, without</p> <p>6 referring to my report.</p> <p>7 Q. I'll represent to you that that's what</p> <p>8 your report says.</p> <p>9 Would you think it's likely that there</p> <p>10 would have been a connection between the information</p> <p>11 being posted on the web site at 9:43 and a</p> <p>12 statistically significant spike at 9:44?</p> <p>13 A. Well, we only find the spike in this</p> <p>14 particular security, I believe. I don't think you</p> <p>15 find it in any of the others.</p> <p>16 Q. So, therefore --</p> <p>17 A. One thing I would point out about all of</p> <p>18 these options, I was looking more closely at the</p> <p>19 data.</p> <p>20 It looks like for some reason the options</p> <p>21 were somewhat sluggish to respond. That's why I</p> <p>22 think we find that in most of these cases, the post</p>  |
| <p style="text-align: right;">Page 163</p> <p>1 A. Yes. That's rather small. I don't know</p> <p>2 without actually doing the numbers whether that would</p> <p>3 have been significant or not.</p> <p>4 Q. Same is true for 9:35, right?</p> <p>5 A. Correct.</p> <p>6 Q. If we go to 9:40, though, there's a spike</p> <p>7 that would have been significant with the broader</p> <p>8 benchmark?</p> <p>9 A. Most likely, yes.</p> <p>10 Q. And again that spike is bigger than the</p> <p>11 one shortly before 10:00?</p> <p>12 A. Yes. And again much smaller than the one</p> <p>13 shortly after 10:00.</p> <p>14 Q. And we're down to 23. And Exhibit 23</p> <p>15 showed -- again this is puts that move inversely to</p> <p>16 the calls, right?</p> <p>17 A. Correct.</p> <p>18 Q. Okay. This shows a significant spike at</p> <p>19 just about 9:44, right?</p> <p>20 A. Looks like about 9:44.</p> <p>21 Q. Okay.</p> <p>22 A. Immediately following a significant spike</p>              | <p style="text-align: right;">Page 165</p> <p>1 9:57 reaction doesn't start until after 10:00; and</p> <p>2 yet when that starts, however, we do observe the same</p> <p>3 kind of pattern of a large number of other spikes</p> <p>4 following closely thereafter.</p> <p>5 I don't really understand the reason for</p> <p>6 the sluggishness, but it seems to be consistent</p> <p>7 across the options; and it is also consistent with</p> <p>8 what I found with as I mentioned earlier the options</p> <p>9 that I didn't examine closely, most of which didn't</p> <p>10 even open until after 10:00 or didn't show any price</p> <p>11 change at all until after 10:00.</p> <p>12 Q. But most of your charts are showing</p> <p>13 significant spikes around 9:25, 9:26, and again in</p> <p>14 the 9:36, 9:37 range; is that fair?</p> <p>15 MS. WILLIAMS: Objection.</p> <p>16 THE WITNESS: It's true of the options.</p> <p>17 Let me look at the others.</p> <p>18 MS. WILLIAMS: Could you read that</p> <p>19 question again?</p> <p>20 THE REPORTER: "Question: But most of</p> <p>21 your charts are showing significant spikes around</p> <p>22 9:25, 9:26, and again in the 9:36, 9:37 range; is</p> |

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| <p>1 that fair?"</p> <p>2 MS. WILLIAMS: Objection.</p> <p>3 MR. SHOPE: Do you want the question</p> <p>4 re-read?</p> <p>5 THE WITNESS: No. That's okay.</p> <p>6 Yes, I think that's true if we modify that</p> <p>7 by saying that if I had used smaller average returns</p> <p>8 or smaller standard deviations in computing these.</p> <p>9 BY MR. SHOPE:</p> <p>10 Q. And had you used a broader data set going</p> <p>11 beyond October 31, you would have gotten that smaller</p> <p>12 average return, correct?</p> <p>13 MS. WILLIAMS: Objection.</p> <p>14 THE WITNESS: If I'd used other days in</p> <p>15 October rather than just October 31, that is true.</p> <p>16 BY MR. SHOPE:</p> <p>17 Q. Why did you choose within minute returns</p> <p>18 as opposed to returns based on a different duration?</p> <p>19 For example, five minutes, half hour, one hour, two</p> <p>20 hours, whole day?</p> <p>21 A. I used one-minute returns because I wanted</p> <p>22 to use small intervals because what we were talking</p>                 | <p>1 Fair statement?</p> <p>2 MS. WILLIAMS: Objection.</p> <p>3 THE WITNESS: No. The significance is</p> <p>4 also scaled to the time period as well. The standard</p> <p>5 deviation -- if you're using a longer period, your</p> <p>6 standard deviation applies.</p> <p>7 BY MR. SHOPE:</p> <p>8 Q. What I'm getting at is let's suppose you</p> <p>9 went by those gas stations every hour. A change of</p> <p>10 one cent from one hour to the next might not mean</p> <p>11 very much, right?</p> <p>12 MS. WILLIAMS: Objection.</p> <p>13 THE WITNESS: From one hour to the next?</p> <p>14 I guess.</p> <p>15 BY MR. SHOPE:</p> <p>16 Q. Yeah.</p> <p>17 A. What's --</p> <p>18 Q. But if -- if every hour -- if it changed</p> <p>19 by a penny every hour for 24 hours straight, you'd</p> <p>20 have a very significant change, right?</p> <p>21 MS. WILLIAMS: Objection.</p> <p>22 THE WITNESS: I just pointed out, you'd be</p>  |
| Page 167  | Page 169  |
| <p>1 about was, in particular, looking at the market's</p> <p>2 reaction to the Reuters news announcement and the</p> <p>3 posting on the web site.</p> <p>4 I could have used a broader return, but I</p> <p>5 think that might mask some information.</p> <p>6 Q. Okay.</p> <p>7 A. So I used a very narrow return.</p> <p>8 Q. But a narrow return could mask information</p> <p>9 as well, right?</p> <p>10 MS. WILLIAMS: Objection.</p> <p>11 THE WITNESS: How would it do that?</p> <p>12 BY MR. SHOPE:</p> <p>13 Q. Well, for example, just to take a common</p> <p>14 example, let's suppose you drove down the street</p> <p>15 every hour at a turnpike pull-off and saw five gas</p> <p>16 stations and you wanted to see what their gas prices</p> <p>17 were.</p> <p>18 And so if you -- you know -- you went at</p> <p>19 8:00, and they all were offering gas for \$3 a gallon;</p> <p>20 and you went at 9:00, and they were offering gas for</p> <p>21 \$3.01 a gallon, might not think that was particularly</p> <p>22 significant.</p> | <p>1 using a different scale. If you're looking at</p> <p>2 one-minute reactions, you're using a standard</p> <p>3 deviation that is keyed to the one-minute reaction.</p> <p>4 If you're using a wider reaction period, you're using</p> <p>5 a larger standard deviation.</p> <p>6 I don't think you're losing any</p> <p>7 information. You could lose information -- I can see</p> <p>8 how you would lose information if you used a wider</p> <p>9 one because you might miss the changes in the price</p> <p>10 in between.</p> <p>11 But I don't see how you lose information</p> <p>12 by using a very narrow one.</p> <p>13 BY MR. SHOPE:</p> <p>14 Q. Let me pose this hypothesis. Suppose</p> <p>15 information is being disseminated into the market in</p> <p>16 a slow manner. Okay?</p> <p>17 A. Okay.</p> <p>18 Q. For example, by word of mouth?</p> <p>19 A. I don't know that that's necessarily a</p> <p>20 slow manner. But --</p> <p>21 Q. Okay. But it -- it might be fast? It</p> <p>22 might be slow? Would that be fair to say?</p> |

**Exhibit AA**

**Cited Excerpts from the SEC  
Investigative Testimony of Steven Nothern  
(December 4, 2001)**

## UNITED STATES SECURITIES AND EXCHANGE COMMISSION

In the Matter of: )  
 TRADING IN CERTAIN )  
 TREASURY ISSUES ) File No. HO-9353

WITNESS: Steven E. Nothern

PAGES: 1 through 213

PLACE: Securities & Exchange Commission  
 450 5th Street, N.W. - Room 11602  
 Washington, D.C. 20549

DATE: Wednesday, November 28, 2001

The above-entitled matter came on for hearing at 10:38 a.m. pursuant to notice.

## APPEARANCES:

On behalf of the Securities and Exchange Commission:

ANDREW SPORKIN, ESQ.  
 WILLIAM M. HATHAWAY, ESQ.  
 Securities & Exchange Commission  
 450 5th Street, N.W.  
 Washington, D.C. 20549  
 (202) 942-4613

On behalf of the Witness:

JACK PIROZZOLO, ESQ.  
 NICHOLAS THEODOROU, ESQ.  
 Foley, Hoag, & Elliot  
 One Post Office Square  
 Boston, Mass., 02109.

## PROCEEDINGS

MR. HATHAWAY: We are on the record. It's approximately 10:30. This is December 4, 2001. Would you raise your right hand, sir?

Whereupon,

STEVEN E. NOTHERN

was called as a witness and, having been first duly sworn by the, was examined and testified as follows:

## EXAMINATION

BY MR. HATHAWAY:

Q Would you please state and spell your full name for the record?

A Steven Eric Nothern - S-t-e-v-e-n -- Eric -- Nothern -- N-o-t-h-e-r-n.

Q Thank you. I am William Maxwell Hathaway. I go by Max. I will be joined shortly by my branch chief on this project, Andrew Sporkin. Both Andrew Sporkin and myself are officers of the Commission for the purposes of this proceeding.

This is an investigation by the United States Securities and Exchange Commission. It's: In the Matter of Trading in Certain Treasury Issues. Our file number is -- HO-9353.

It is an investigation is to determine whether there have been any violations of the federal securities

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## CONTENTS

| WITNESS:       |   | Page       |
|----------------|---|------------|
| Steven Nothern |   | 3          |
| EXHIBITS:      | DESCRIPTION   | IDENTIFIED |
| 222            | Subpoena, nine-page document                                    | 5          |
| 223            | Three-page Letter from the SEC, includes subpoena duces tecum   | 13         |
| 224            | 1/2 floor plan for 23rd floor on Boylston Street                | 38         |
| 225            | Other 1/2 of floor plan for 23rd floor on Boylston Street       | 38         |
| 226            | Bloomberg message from WI Partners and RJ O'Brien & Associates  | 166        |
| 227            | ITMO Trading in Certain Treasury Issues                         | 167        |
| 228            | Five page document; M-000113, 114, 114A, 115 through M-116      | 173        |
| 229            | Legal and regulatory update by Steve Cavan                      | 184        |
| 230            | MFS Co. statement of policy on Personal Securities Transactions | 190        |
| 231            | MFS Statement of Guidelines                                     | 191        |

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1 laws.

2 However the evidence adduced in this investigation  
 3 or today's testimony session might constitute violations of  
 4 other state or federal, civil or criminal statutes.

5 Prior to the opening of the record, which means  
 6 prior to our actually going the tape recorder on and  
 7 beginning here today, you were provided with a copy of the  
 8 formal order of investigation which is in front of you here  
 9 and I am touching it as I speak.

10 This copy of the formal order will remain available  
 11 for your examination throughout the course of today's  
 12 testimony session.

13 Have you had an opportunity to review the formal  
 14 order of investigation?

15 A Yes, I have.

16 Q You were also provided prior to the opening of the  
 17 record with a copy Exhibit No. 202, which is a copy of the  
 18 Commission's Form 1662.

19 Have you had an opportunity to read Exhibit No.  
 20 202?

21 A Yes, I have.

22 Q Do you at this time have any questions at this time  
 23 concerning this exhibit?

24 A No.

25 Q Mr. Nothern, are you represented by counsel?

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1 Q Did you know how information is disseminated at a  
 2 conference, refunding conference?  
 3 A I don't.  
 4 Q Did you know whether people were given press  
 5 releases?  
 6 A I don't.  
 7 Q Do you know whether persons attending a conference  
 8 are given reports of any nature?  
 9 A I don't know. Can I add one thing?  
 10 Q Yes.  
 11 A I am familiar with the fact that they distribute a  
 12 press release, because I've had those faxed to me.  
 13 Q Do you know whether or not that distribution of the  
 14 press release occurred at the conference or --  
 15 A That's what I don't know.  
 16 BY MR. SPORKIN:  
 17 Q How did you get the faxes?  
 18 A Mr. Davis would fax those after the quarterly  
 19 refunding announcements. I've seen them before.  
 20 BY MR. HATHAWAY:  
 21 Q Do these faxes occur the day of the conference or  
 22 the day after or --  
 23 A I would guess same day.  
 24 Q Why do you guess that?  
 25 A Because I don't know specifically when they come

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1 in.  
 2 Q Do you know whether there are any live feeds to the  
 3 media at a quarterly refunding conference?  
 4 A No, I don't.  
 5 Q Does CSPAN cover these conferences?  
 6 A Not to my knowledge.  
 7 Q Does CNN cover these conferences?  
 8 A Not to my knowledge.  
 9 Q Does any media or news service provide live  
 10 coverage of these conferences?  
 11 A Not to my knowledge.  
 12 Q Do persons attending a refunding conference receive  
 13 information from Treasury before Treasury makes it generally  
 14 available to the public?  
 15 A I don't know the process.  
 16 Q Are any restrictions placed on the ability of  
 17 persons to use the information that they receive from  
 18 Treasury at the refunding conference?  
 19 A Not to my knowledge.  
 20 Q Do persons receiving such information have to wait  
 21 any wait any amount of time before passing this information  
 22 along to others?  
 23 A Not to my knowledge.  
 24 Q Have you ever heard the term "embargo,"  
 25 e-m-b-a-r-g-o, as it relates to information?

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1 MR. THEODOROU: As of what date?  
 2 BY MR. HATHAWAY:  
 3 Q As of today, have you heard that term "embargo"  
 4 used in the context of information?  
 5 A Yes.  
 6 Q What does it mean to you, as you sit here today?  
 7 A With regards to the Treasury, I don't know what it  
 8 means. To me it's a term that applies to the press.  
 9 Q What does it mean to you in terms of that?  
 10 A Other departments, and I know Labor Department  
 11 specifically, so one other department, has a process for  
 12 release of what they deem to be market sensitive information  
 13 whereby they actually lock the press in a room, it's my  
 14 understanding at Labor Department, for releases such as the  
 15 employment report, and they also release the CPI report.  
 16 They give information to the press, and the doors  
 17 aren't unlocked at a point in, and also has access, to my  
 18 understanding, electronic media. So they can actually digest  
 19 the information they're being given and write their story.  
 20 But there is some sort of mechanism whereby it  
 21 doesn't get filed with the home office, or whatever their  
 22 process -- you know, the reporter's procedures are, until  
 23 there's some sort of release of the electronic media.  
 24 So I think the Labor Department controls both the  
 25 physical environment and the electronic dissemination of the

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1 report, but they want to give them time to construct their  
 2 stories that will hit the wires.  
 3 Q How did you learn of this process at Labor?  
 4 A Specifically, it's just general knowledge.  
 5 Q How long have you known this?  
 6 A I don't know. Specifically, it's just general  
 7 knowledge.  
 8 Q Have you known this for at least a year?  
 9 A Oh, yes.  
 10 Q Five years?  
 11 A I don't know the answer.  
 12 Q It is your testimony that you've known for at least  
 13 a year that the Labor Department used the process you just  
 14 testified to when it came to releasing market sensitive  
 15 information?  
 16 A Yes.  
 17 Q How does the term "embargo, in your mind, fit in  
 18 that context that you just testified to?  
 19 A That process is described as an embargo process.  
 20 BY MR. SPORKIN:  
 21 Q Are you aware of any other U.S. agencies or  
 22 departments that use this process?  
 23 A No, I'm not.  
 24 Q Do you know whether the Federal Reserve uses this  
 25 process in releasing interest rates?

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1 A I don't.  
 2 Q Do you know whether the Department of Treasury uses  
 3 this?  
 4 A I don't.  
 5 BY MR. HATHAWAY:  
 6 Q Is it any part of your understanding of a Labor  
 7 embargo process, as you've described it, that the release --  
 8 that the fact that if it's market sensitive information  
 9 that's being released that requires the use of these  
 10 procedures?  
 11 A Can I stop you for one second?  
 12 Q Yes.  
 13 A Your questions with regard to the Treasury is  
 14 before 10/31?  
 15 Q Yes.  
 16 A My answer stands.  
 17 Q Is any part of your understanding of the embargo  
 18 procedures that you've described regarding Labor that they  
 19 are needed because market sensitive information is being  
 20 released?  
 21 A It's a process they employ. I couldn't tell you  
 22 why.  
 23 Q In your mind, do you connect this process with the  
 24 type of information that's involved?  
 25 A In my mind, information that the Labor Department

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releases marked sensitive the market is interested in its  
 data.  
 3 Q And the fact in your mind that this is market  
 4 sensitive information, does that correlate to why these types  
 5 of procedures are being used by Labor?  
 6 A Yes.  
 7 Q Do you have any -- in terms of quarterly refunding  
 8 conferences, do you consider the type of information released  
 9 there to be market sensitive?  
 10 A Yes.  
 11 Q As you sit here today, do you have any reason to  
 12 think that Treasury would employ -- would not employ similar  
 13 procedures for safeguarding that market sensitive  
 14 information?  
 15 A I'm sorry.  
 16 Q You've testify to certain procedures used at Labor  
 17 surrounding market sensitive information. You've testified  
 18 that to your mind information released at quarterly refunding  
 19 conferences is market sensitive. My question now is whether  
 20 you have any reason to believe that the Treasury Department  
 21 would not also use some sort of procedures to safeguard the  
 22 market sensitive information?  
 23 A I have no knowledge of what the procedures are at  
 24 Treasury.  
 Q Aside from specific procedures that might or might

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1 not be employed, do you have any reason to think that the  
 2 Treasury Department would not be interested in safeguarding  
 3 the market sensitive information before its release?  
 4 I'm putting my questions in a negative form, and I  
 5 apologize for that.  
 6 A Right. Can you just rephrase it?  
 7 Q Let me see if I can. To your way of thinking, does  
 8 the Treasury Department have a reason to safeguard the market  
 9 sensitive information that it will release at a quarterly  
 10 refunding conference?  
 11 A I can't speak to their --  
 12 Q To your mind.  
 13 MR. THEODOROU: I think the reason why my client  
 14 might be confused is he has testified he doesn't really  
 15 know -- you're assuming that he says he knows it's absolutely  
 16 market sensitive.  
 17 MR. HATHAWAY: He has testified, I believe, that  
 18 the information is market sensitive, to his mind.  
 19 BY MR. HATHAWAY:  
 20 Q What I'm trying to get my arms around here is  
 21 whether, in your mind, have you any reason to believe that  
 22 the Treasury Department would not also have some sort of  
 23 procedures to safeguard that information.  
 24 A I have no knowledge of what their procedures are  
 25 with regards to information.

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1 Q Aside from specific procedures, whether they lock  
 2 people in a room or whether they give them a fingerprint  
 3 test, or whatever, putting specifics aside, do you think the  
 4 Treasury Department has some procedures, whatever they may  
 5 be, for safeguarding market sensitive information at a  
 6 quarterly refunding conference?  
 7 A Yes.  
 8 Q What is your basis for thinking that?  
 9 A It's speculation.  
 10 Q Were you at work on October 31, 2001?  
 11 A Yes.  
 12 Q When did you arrive?  
 13 A I don't recall specifically.  
 14 Q Typically, when do you arrive?  
 15 A 7:30.  
 16 Q Were there any events, announcements or releases  
 17 that you intended to look for that day?  
 18 A Yes. There was a 10 o'clock release of a Chicago  
 19 index.  
 20 Q Any other reports and releases that you were  
 21 continuing to look for that day?  
 22 A No.  
 23 Q Have you heard of something called the G, as in  
 24 George, D, as in dog, P as in Peter, GDP?  
 25 A Yes.

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1 the 30-year bond was embargoed? Is that what he asked you?

2 A What I perceived he was asking --

3 Q Yes.

4 A -- was, "Did Pete Davis say we couldn't trade on

5 this information?" That was the perceived question.

6 Q That's what you thought he was saying, but the

7 words he used to you were?

8 A I don't know specifically. In substance, it was,

9 "Did Pete Davis say this was embargoed?"

10 Q And the "this" that he referenced, did you

11 understand that to go to the press release or to the

12 information or --

13 A I understood it to go to us, in terms of being

14 somehow restricted. I understood it secondarily to go to

15 petition Davis, that he was restricted and that he would have

16 said, you know, "We can't use this information for our

17 business purposes."

18 Q Is it your testimony --

19 A He didn't bring up the issue of press release.

20 Q Thank you. I'm trying to get an understanding for

21 what was in your mind that day and perhaps still is. Is it

22 your understanding that information could be embargoed as

23 relates to certain people but not embargoed as it relates to

24 other people? Is that your understanding?

25 A My understanding of "embargo," we talked about

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1 earlier, is that it's a term that applies to the press.

2 Q And it means what when it applies to the press?

3 A The only context that I know of it applying to the

4 press is in the context that we discussed of Labor Department

5 procedures where they're actually physically restrained from

6 leaving the room, to my knowledge. I actually -- I don't

7 have firsthand knowledge of how they actually do things

8 there.

9 MR. THEODOROU: Max, can we take a five-minute

10 break?

11 MR. HATHAWAY: We're off the record. It's about

12 ten until 3:00.

13 (A brief recess was taken.)

14 MR. HATHAWAY: We're back on the record at four

15 minute until 3:00. There were substantive discussions in the

16 break that involved the witness's counsel and the staff but

17 not the witness. Is that correct, sir?

18 MR. THEODOROU: Yes.

19 MR. HATHAWAY: And in those substantive

20 discussions, there were suggestions made by counsel for the

21 witness in terms of perhaps how best to structure the

22 sequence of questions to draw out the witness's understanding

23 of certain events and the import of certain terms in this

24 advice mail he received. Is that correct, Counsel?

25 MR. THEODOROU: Yeah, discussion in terms of

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1 procedure by which to draw out in more clarity the events in

2 question.

3 MR. HATHAWAY: Thank you, Counsel.

4 BY MR. HATHAWAY:

5 Q Before starting to start from the time the call

6 forward, I just had a couple questions, and then I'll try to

7 move you forward in a chronological fashion.

8 My first question is has Peter Davis ever in any

9 way explained to you what the term "embargo" means?

10 A No.

11 Q Have you ever had any discussion of any nature with

12 Peter Davis concerning the term "embargo"?

13 A Not to my recollection.

14 Q In the voice mail you received from Mr. Davis, did

15 he tell you in that voice mail that it was okay for you to

16 trade on the information that he was giving you? Is that a

17 yes or no?

18 A The substance of it voice mail?

19 Q Did Mr. Davis in the voice mail used words to the

20 effect of, "It's okay to trade on this information"?

21 A Not to my recollection.

22 Q Did Mr. Davis in the voice mail use words to the

23 effect of, "You cannot use this information to trade on"?

24 A Not to my recollection.

25 Q If you would, please, once again state as well as

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1 you remember the substance of the voice mail that you

2 received from Mr. Davis.

3 A In substance, I took two things away. One was

4 Peter Fisher had indicated to Mr. Davis that Treasury would

5 be canceling the long bond and, secondly, that there would be

6 a press release, but it was embargoed until 10:00.

7 Q That there would be a press release on the

8 cancellation of the 30-year bond?

9 A I don't recall him saying that specifically.

10 BY MR. SPORKIN:

11 Q What was your understanding, though?

12 A Yes, that that would include that information.

13 BY MR. HATHAWAY:

14 Q Do you remember anything else about the substance

15 of that voice mail?

16 A No.

17 Q After you listened to that voice mail, did you

18 believe that it was okay for you to use that information in

19 making trading decisions?

20 A Yes.

21 Q Why?

22 A There was no indication that it would not be okay.

23 There was nothing that raised a flag to that effect.

24 BY MR. SPORKIN:

25 Q Including the use of the word "embargo" in this

**Exhibit BB**

**Cited Excerpts from the Deposition of  
Bloomberg LLP (Patrick Eldridge)  
(November 2, 2006)**

New York, NY

| Page 2  | Page 4   |
|---|--|
| <p>1 November 2, 2006<br/>                     2 9:42 a.m.<br/>                     3<br/>                     4<br/>                     5 VIDEOTAPED DEPOSITION OF PATRICK ELDRIDGE, held<br/>                     6 at the offices of Securities and Exchange<br/>                     7 Commission, 3 World Financial Center, New York, New<br/>                     8 York, pursuant to 30(b)(6) Notice, before Dorothy H.<br/>                     9 London, a Registered Professional Reporter and<br/>                     10 Notary Public of the State of New York.<br/>                     11<br/>                     12<br/>                     13<br/>                     14<br/>                     15<br/>                     16<br/>                     17<br/>                     18<br/>                     19<br/>                     20<br/>                     21<br/>                     22<br/>                     23<br/>                     24<br/>                     25</p>   | <p>1 INDEX<br/>                     2<br/>                     3 WITNESS EXAMINATION BY PAGE<br/>                     4<br/>                     5<br/>                     6 PATRICK ELDRIDGE Ms. Williams 6<br/>                     7 79<br/>                     8<br/>                     9 Mr. Toone 69<br/>                     10 83<br/>                     11<br/>                     12<br/>                     13 EXHIBITS<br/>                     14 ELDRIDGE<br/>                     15 DESCRIPTION PAGE<br/>                     16<br/>                     17 1 Notice and Subpoena issued 11<br/>                     18 by the Securities and<br/>                     19 Exchange Commission to<br/>                     20 Bloomberg LP<br/>                     21 2 Printout of a Bloomberg 23<br/>                     22 function<br/>                     23<br/>                     24 3 Printouts from the TOMS 27<br/>                     25 system for Merrill Lynch</p>   |
| Page 3  | Page 5   |
| <p>1 APPEARANCES:<br/>                     2<br/>                     3 U.S. SECURITIES AND EXCHANGE COMMISSION<br/>                     4 Attorneys for Plaintiff<br/>                     5 100 F Street, N.E.<br/>                     6 Washington, D.C. 20549<br/>                     7<br/>                     8 BY: ERICA Y. WILLIAMS, ESQ.<br/>                     9<br/>                     10 FOLEY HOAG, LLP<br/>                     11 Attorneys for Defendant<br/>                     12 Seaport World Trade Center West<br/>                     13 155 Seaport Boulevard<br/>                     14 Boston, Massachusetts 02210<br/>                     15 BY: ROBERT E. TOONE, ESQ.<br/>                     16<br/>                     17 BLOOMBERG<br/>                     18 Attorney for Witness<br/>                     19 731 Lexington Avenue<br/>                     20 New York, New York 10022<br/>                     21 BY: CATHERINE MARTEN, ESQ.<br/>                     22<br/>                     23 ALSO PRESENT:<br/>                     24 JUAN TORRES, VIDEOGRAPHER<br/>                     25</p> | <p>1 THE VIDEOGRAPHER: This is Tape No. 1 of<br/>                     2 the videotaped deposition of Mr. Patrick Eldridge in<br/>                     3 the United States Securities and Exchange Commission<br/>                     4 versus Steven Nothorn in the United States District<br/>                     5 Court for the District of Massachusetts.<br/>                     6 This deposition is being held at the SEC<br/>                     7 offices, 3 World Financial Center, New York, New<br/>                     8 York on November 2, 2006 at approximately 9:42 a.m.<br/>                     9 My name is Juan Torres, and I'm the legal video<br/>                     10 specialist. The court reporter is Dorothy London.<br/>                     11 Will counsel please introduce themselves<br/>                     12 beginning with the party noticing this proceeding?<br/>                     13 MS. WILLIAMS: Erica Williams for the<br/>                     14 plaintiff, United States Securities and Exchange<br/>                     15 Commission.<br/>                     16 MR. TOONE: Robert Toone for the<br/>                     17 defendant, Steven Nothorn, from Foley Hoag, Boston.<br/>                     18 MS. MARTEN: Catherine Marten for<br/>                     19 Bloomberg LP.<br/>                     20 THE VIDEOGRAPHER: Will the court reporter<br/>                     21 please swear in the witness?<br/>                     22 P-A-T-R-I-C-K E-L-D-R-I-D-G-E,<br/>                     23 Having been duly sworn by the Notary<br/>                     24 Public, was examined and testified as<br/>                     25 follows:</p> |

2 (Pages 2 to 5)

Patrick Eldridge 30(b)(6)

November 2, 2006

New York, NY

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1 ftime, "(9:45) 35144," and I believe you said that  
 2 that is 9:45 and 44 seconds.  
 3 A. Yeah, I believe that to be correct.  
 4 Q. And that reflects what?  
 5 A. The ftime reflects the actual time the  
 6 salesman's version of this transaction was submitted  
 7 into our system.  
 8 Q. And two lines below that, the fastime,  
 9 "(9:44) 35099," and I believe you said that was 9:44  
 10 and 49 seconds.  
 11 A. I think it was 59 seconds, actually.  
 12 Q. Fifty-nine seconds?  
 13 A. Yeah. That's --  
 14 Q. And that reflects what?  
 15 A. That reflects the as of time of the  
 16 transaction, a time that would default to the moment  
 17 the salesman loads the ticket entry screen but can  
 18 be adjusted manually.  
 19 Q. And the ftime could not be adjusted  
 20 manually?  
 21 A. By going to the ticket, the salesperson  
 22 cannot adjust the ftime. They can adjust it by  
 23 holding off on their submission of the transaction,  
 24 but it will capture the exact time that that ticket  
 25 is submitted.

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1 Q. As soon as they push the go and submit  
 2 one?  
 3 A. Correct.  
 4 Q. The time could not be altered thereafter?  
 5 A. That is correct.  
 6 Q. Okay. Do you know if the TOMS system was  
 7 experiencing any problems on October 31, 2001?  
 8 A. I do not know.  
 9 Q. What, if any, notices would Bloomberg have  
 10 received if the TOMS system was not functioning  
 11 properly?  
 12 A. We have significant metrics of all of our  
 13 systems in terms of performance. We have operators  
 14 that monitor our hardware and our servers for any  
 15 type of performance issues as well as general  
 16 diagnostic tools that are used by a variety of teams  
 17 within Bloomberg.  
 18 Q. When you say we have monitors who watch  
 19 the system, what do they do?  
 20 A. We have an area of Bloomberg called the  
 21 console room that has diagnostic monitors that  
 22 measure the performance of these servers that the  
 23 TOMS system is on.  
 24 Q. Is this measured electronically or are  
 25 there people in there who are actually watching

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1 this?  
 2 A. The system is measured electronically, and  
 3 we also have operators who monitor the screens that  
 4 are watching the system. There are also electronic  
 5 alerts that will be generated when certain  
 6 thresholds or barriers are broken.  
 7 Q. Would a user have received -- what, if  
 8 any, notice would a user have received if TOMS was  
 9 not functioning properly?  
 10 A. The user would not have received any  
 11 notification if TOMS was not working correctly.  
 12 Q. Would the logs have represented any --  
 13 would there be any representation in the log if TOMS  
 14 is not working properly?  
 15 A. In the logs that are represented here,  
 16 there would be no indication of any TOMS failures.  
 17 MS. WILLIAMS: Just one second. I have no  
 18 further questions at this time. I might have some  
 19 after Mr. Toone.  
 20 MR. TOONE: Can we take a break?  
 21 MS. WILLIAMS: Sure.  
 22 THE VIDEOGRAPHER: The time is 11:18 a.m.,  
 23 going off the record.  
 24 (Recess taken.)  
 25 THE VIDEOGRAPHER: The time is 11:28, and

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1 we're back on the record.  
 2 EXAMINATION  
 3 BY MR. TOONE:  
 4 Q. Mr. Eldridge, my name is Robert Toone. We  
 5 met earlier. I'm just going to ask you a few  
 6 questions to follow up on the questions that  
 7 Ms. Williams asked you.  
 8 A. Okay.  
 9 Q. Do you recall testifying today about what  
 10 the actual final time of this transaction was?  
 11 A. Yes.  
 12 Q. What is that time?  
 13 A. The time, as displayed here, would be 9:45  
 14 and 49 seconds.  
 15 Q. When you say "displayed here," you're  
 16 referring to Exhibit No. 3?  
 17 A. Correct.  
 18 Q. How are ticket numbers generated by the  
 19 TOMS system exactly?  
 20 A. The TOMS system generates ticket numbers  
 21 on the database as an algorithm in a sequential  
 22 order going up between 1 and 999,999. Basically,  
 23 the next action would create the next ticket number  
 24 in that sequence. And it's all done as a computer  
 25 algorithm.

18 (Pages 66 to 69)

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1 that data. That's a long version of that  
2 transaction.

3 A quick slate allows the trader not to  
4 have to go to that screen and input the data  
5 manually. Rather, they can input it all as one line  
6 item at the top of their screen, meaning, action --  
7 security, action, amount and price as one string,  
8 hit go once, and it inputs all the data in for them  
9 immediately.

10 Q. So the four items entered during this  
11 quick sale slate process are security, action,  
12 amount, price?

13 A. That is correct.

14 Q. But during the quick sale slate process,  
15 the trader does not enter information about the  
16 counterparty; is that correct?

17 A. That's correct.

18 Q. Can you have a transaction without a  
19 counterparty?

20 A. You cannot have a completed transaction in  
21 the TOMS system without a counterparty.

22 Q. And that information is provided by the  
23 salesperson under the TOMS system?

24 A. For this type of transaction, it is  
25 provided by the salesperson. It's the salesperson's

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1 responsibility to input the counterparty.

2 Q. And looking at the documents in Exhibit 3,  
3 when did the salesperson in this instance enter that  
4 information regarding the counterparty?

5 A. Based upon the documents as I see here,  
6 the salesperson put that information into their  
7 version of events that created Ticket No. 606311.

8 Q. And when was that?

9 A. It's showing an as of time of 9:44 and 59  
10 seconds with a submission time of 9:45 on Page 2 of  
11 Exhibit 3.

12 Q. I'm sorry, so you're referring to the as  
13 of time, and then can you determine once again what  
14 the trade time is for the salesperson's entry?

15 A. Yes. If you refer to, I believe, we  
16 identified it as Page 11 of Exhibit 3, it is the  
17 document that has the Number 8 in the upper  
18 left-hand corner.

19 Q. And what can you find from that page?

20 A. It's the page I'm referring to in the  
21 center top column shows "ftktnum" of "606311,"  
22 "ftktnum," referring to "606311." In the left-hand  
23 column, Line 3 shows "ftime," which is the  
24 transaction time, of "9:45," and next to that it  
25 shows "35144," which represents 35,144 seconds past

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1 midnight when that submission was entered into the  
2 system.

3 Q. And translate that into real-time?

4 A. The ticket, it looks to be, 9:45 and 44  
5 seconds the ticket was submitted into the system.

6 Q. And then it was approved at what time  
7 again?

8 A. The time of approval, if we go back to  
9 Page No. 4 of the document, Line 3 in the left-hand  
10 column, "ftime" shows as "9:45," and next to that  
11 it shows a time of "35149," representing 35,149  
12 seconds past midnight as the time that the ticket  
13 was matched.

14 Q. And that is the time of this transaction?

15 A. That is the trade time of this  
16 transaction.

17 Q. Let me just ask you a few more questions  
18 about the conversations you had with the SEC. I  
19 believe that you testified that you met with  
20 Mr. Rosetti and Ms. Williams about a month ago?

21 MS. WILLIAMS: Objection.

22 Q. Is that correct?

23 A. We did not meet.

24 Q. Oh, I'm sorry, did you have a phone call  
25 then?

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1 A. Yes.

2 Q. And that conversation lasted for about an  
3 hour?

4 MS. WILLIAMS: Objection.

5 A. That's correct.

6 Q. And can you just briefly summarize the  
7 subjects that you discussed with the SEC at that  
8 time?

9 A. At that time we reviewed the transaction  
10 and the series of events in similar fashion to the  
11 way that they are outlined here in terms of  
12 identifying what transpired and when it transpired  
13 regarding Ticket 606314.

14 Q. And did you tell the SEC at that time what  
15 you believed the transaction time was according to  
16 these documents?

17 A. Yes.

18 Q. And what did you tell them?

19 A. I told them the transaction time, as I see  
20 it in the transaction database, was the final  
21 transaction time was 9:45 and 49 seconds.

22 Q. Have you ever been contacted by the  
23 Department of Justice regarding this matter or any  
24 related matter dealing with the trade on the 30-year  
25 bond?

## **Exhibit CC**

### **Cited Excerpts from the SEC's Responses to Nothern's Interrogatories**

**UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF MASSACHUSETTS  
(Boston Division)**

**UNITED STATES SECURITIES AND  
EXCHANGE COMMISSION,**

**Plaintiff,**

**v.**

**STEVEN E. NOTHERN,**

**Defendant.**

Civil Action No. 05-CV-10983 (NMG)

**PLAINTIFF'S RESPONSES TO DEFENDANT  
STEVEN E. NOTHERN'S INTERROGATORIES  
TO PLAINTIFF U.S. SECURITIES AND EXCHANGE COMMISSION**

Plaintiff, the Securities and Exchange Commission ("Commission"), serves these responses and objections to defendant Steven E. Nothern's Interrogatories.

**PRELIMINARY STATEMENT**

The Commission's detailed Complaint sets forth the bases of its allegations. On October 6, 2005, the Commission also filed and served Initial Disclosures complete with a listing of witnesses and subject matters as well as other relevant information. The Commission has also produced in electronic form approximately 52 boxes consisting of over 136,400 pages of documents, including sworn investigative testimony of the defendant and other witnesses. Answers to Defendant's Interrogatories have been produced either in the form of the Initial Disclosures or the documents. Thus, Defendant's Interrogatories are duplicative.

**INTERROGATORY NO. 3**

If you contend that on October 31, 2001 Davis had a duty of trust or confidence to Treasury, state the basis for this contention.

**OBJECTION TO INTERROGATORY NO. 3**

Plaintiff objects to this Interrogatory on the grounds that it calls for a legal conclusion.

**RESPONSE TO INTERROGATORY NO. 3**

Subject to and without waiving its general and specific objections, Plaintiff refers Defendant to the facts detailed in the Complaint and the facts described in detail in the documents and investigative testimony provided to Defendant in Plaintiff's Initial Disclosures. Plaintiff also refers Defendant to the April 19 and 20, 2006 deposition of Davis as well as the September 3, 2003 Criminal Plea Hearing transcript in *U.S. v. Davis*, 03 Cr. 1054 (SAS). As Davis testified during his deposition, sometime in 1994-95 he entered into a written agreement with Treasury in which he was granted permission to attend Treasury's quarterly refunding press conferences in return for his agreeing to abide by Treasury's embargo procedures and keep all information released at the press conferences confidential until after the expiration of the stated embargo time. According to Davis, Roger Anderson, then Treasury's Deputy Assistant Secretary for Federal Finance, entered into this agreement on Treasury's behalf. Davis further testified that this agreement was in effect on October 31, 2005. In addition Davis testified that although he received a copy of this agreement on the day he and Anderson signed it, he discarded his

copy in August 2001. The Plaintiff is unaware of the location of the original written agreement.

**INTERROGATORY NO. 4**

Identify all documents evidencing or otherwise showing a duty of trust or confidence by Davis to Treasury. To the extent you are unable to identify such documents, state, to the best of your knowledge, whether any such documents exist or have ever existed.

**OBJECTION TO INTERROGATORY NO. 4**

Plaintiff objects to this Interrogatory on the grounds that it calls for a legal conclusion.

**RESPONSE TO INTERROGATORY NO. 4**

Subject to and without waiving its general and specific objections, Plaintiff refers Defendant to its Response to Interrogatory No. 3.

**INTERROGATORY NO. 5**

Identify all confidentiality agreement forms, models, or templates used by Treasury between January 1, 1994 and October 31, 2001. To the extent you are unable to identify such documents, state, to the best of your knowledge, whether any such documents exist or have ever existed.

**OBJECTION TO INTERROGATORY NO. 5**

Plaintiff objects to this Interrogatory on the grounds that it is overly broad, unduly burdensome and not reasonably calculated to lead to the discovery of admissible evidence. Plaintiff further objects to this request on the grounds that it seeks information from the

**OBJECTION TO INTERROGATORY NO. 8**

Plaintiff objects to this Interrogatory on the grounds that it is overly broad, unduly burdensome and not reasonably calculated to lead to the discovery of admissible evidence. Plaintiff further objects to the phrase "manner in which each official or employee permitted Davis to attend the refunding press conferences" as vague and ambiguous.

**RESPONSE TO INTERROGATORY NO. 8**

Subject to and without waiving its general and specific objections, Plaintiff refers to the facts detailed in the Complaint, the April 19 and 20, 2006 deposition testimony of Davis, the September 3, 2003 Criminal Plea Hearing transcript in *U.S. v. Davis*, 03 Cr. 1054 (SAS) and the facts described in detail in the documents and investigative testimony provided to Defendant in Plaintiff's Initial Disclosures. Plaintiff also refers Defendant to Plaintiff's Response to Interrogatory No. 3.

**INTERROGATORY NO. 9**

If you contend that prior to 10:00 a.m. on October 31, 2001 Nothern knew or should have known about a duty of trust or confidence by Davis to Treasury, state the basis for this contention.

**OBJECTION TO INTERROGATORY NO. 9**

Plaintiff objects to this Interrogatory on the grounds that it calls for a legal conclusion.

**RESPONSE TO INTERROGATORY NO. 9**

Subject to and without waiving its general and specific objections, Plaintiff refers Defendant to the facts detailed in the Complaint and the facts described in detail in

Defendant's December 4, 2001 pre-lawsuit investigative testimony, provided to Defendant in Plaintiff's Initial Disclosures. In this investigative testimony Defendant admitted that before 10:00 a.m. on October 31, 2001, he received a voicemail from Davis informing him that Peter Fisher – who Defendant knew to be a Treasury official – had indicated to Davis that Treasury was going to be canceling the 30-year bond and that there was an embargo in place until 10 a.m. Nothern further testified that he was familiar with the term embargo as a mechanism that at least one other department of the federal government used to protect market sensitive information. Plaintiff also refers Defendant to Davis' April 19 and 20, 2006 deposition testimony documents produced by Davis in response to Defendant's subpoena in this case, Plaintiff Initial Disclosures and documents previously produced. These documents include, *inter alia*, facts that show that Nothern was aware that Davis had contacts at Treasury and that Nothern attended meetings that Davis arranged with Treasury officials. In addition Davis provided Nothern and his other clients with documents and materials that referenced and/or were created by Treasury, including, but not limited to, documents related to Treasury's quarterly refunding conferences.

**INTERROGATORY NO. 10**

If you contend that prior to 10:00 a.m. on October 31, 2001 Nothern knew or should have known that Davis breached a duty of trust or confidence to Treasury, state the basis for this contention.

and/or were created by Treasury, including, but not limited to, documents related to Treasury's quarterly refunding conferences.

**INTERROGATORY NO. 15**

State the basis for the allegation in Paragraph 35 of the Complaint that "Nothorn knew: (a) that Peter Fisher was an official at Treasury in the debt finance area who had access to information of the nature reported by Davis; (b) that Treasury refunding announcements conveyed market sensitive information; and (c) the meaning and nature of an embargo."

**RESPONSE TO INTERROGATORY NO. 15**

Subject to and without waiving its general objections, Plaintiff refers Defendant to the facts described in detail in Defendant's December 4, 2001 pre-lawsuit investigative testimony, provided to Defendant with Plaintiff's Initial Disclosures. In this investigative testimony Defendant admitted that he knew Peter Davis to be a Treasury official in the debt finance area. He further admitted that he considered information released at quarterly refunding conferences to be market sensitive. In addition, Defendant testified that he was familiar with the term embargo as a mechanism used by at least one department of the government to protect market sensitive information. Plaintiff also refers Defendant to the April 19 and 20, 2006 deposition testimony of Davis and to documents produced with Plaintiff's Initial Disclosures.

**INTERROGATORY NO. 16**

State (by date, hour, minute, and second) the times at which the trades described in Paragraphs 37 and 38 of the Complaint occurred, noting specifically the times at which

the trades were initiated and when they were completed and identifying all clocks and/or timekeeping systems on which you rely.

**RESPONSE TO INTERROGATORY NO. 16**

Subject to and without waiving its general objections, Plaintiff refers Plaintiff refers to the facts described in detail in the documents and investigative testimony provided to Defendant in Plaintiff's Initial Disclosures, including, but not limited to documents SECNOTH00115359-384; SECNOTH00120002-00120006 and SECNOTH00133770-772, Defendant's December 4, 2001 pre-lawsuit investigative testimony, the investigative testimony of Geoffrey Kurinsky dated December 12, 2001, the investigative testimony of David Kennedy dated December 11, 2001 and the investigative testimony of D. Richard Smith dated December 11, 2001. Plaintiff also refers Defendant to the Verizon telephone records of Davis produced with Plaintiff's Initial Disclosures, which indicate that Davis left a voicemail for Defendant on October 31, 2001 at 9:38 a.m. According to information gathered by Plaintiff to date, and included in the documents referenced above, Nothern's trade for \$25 million of 30-year bonds (his portion of a combined \$65 million trade) was initiated between 9:38 and 9:42 a.m. and was executed between 9:42 am and 9:42:49 am. Nothern's trade for \$14.25 million of 30-year bonds was initiated sometime between 9:38 am and 9:51 am and was executed on or about 9:51 am.

**INTERROGATORY NO. 17**

Identify all documents evidencing or otherwise showing the times at which the trades described in Paragraphs 37 and 38 of the Complaint occurred. To the extent you

**Exhibit DD**

**Reuters Article:  
“Wall Street sees red over leak of T-bond’s demise”  
(October 31, 2001)**

Printed By Reuters : Unknown

Wednesday, 31 October 2001 17:37:

15:28 31 Oct RTRS-Wall Street sees red over leak of T-bond's demise

By Daniel Sternoff

NEW YORK, Oct 31 (Reuters) - If Wall Street shed any tears over the U.S. Treasury's decision to send the 30-year bond to an early grave, they were tears of rage over a news leak that gave some dealers a head start on the biggest bond rally in history. Not only did Treasury spring a Halloween surprise by declaring it had no further use for the one-time benchmark, it had bond dealers feeling doubly duped for posting the news on its Web site well before the scheduled announcement of its fourth-quarter borrowing needs.

"There's going to be a lot of noise about that," said John Roberts, head of governments trading at Barclays Capital in New York.

"It's a fluke and it's wrong that people have information. It's like being able to trade on inside information," he said.

The Treasury was due to make its quarterly refunding announcement at 10:00 a.m. (1500 GMT) on Wednesday.

But the news appeared on the Treasury's Web site around 15 to 20 minutes before the scheduled refunding announcement, leaving many players scrambling to understand why the soon-to-be scarce long bond started flying higher.

And while the Treasury market has long mulled the eventual demise of the 30-year bond, few were expecting the government would retire the long bond at a time when Washington is raising funds to fight a war and a budding recession.

"It came out of nowhere," said Steve Saslow, proprietary bond trader at HSBC Securities. "The rumors started going around and the bonds started going crazy, so obviously somebody had a lead of a few minutes."

That lead will probably earn some lucky traders a fat year-end bonus for an early jump on the long bond's unprecedented rally of more than 5-1/2 points and largest decline in yields since the 1987 stock market crash.

Peter Fisher, Treasury's undersecretary for domestic finance, insisted the government was not manipulating the market in the world's most secure assets.

"We cannot run this business if people think we are trying to time the market or outsmart the market," Fisher said in an interview with cable television network CNBC.

But those remarks rang hollow for traders who at best saw ham-handed handling of the announcement, and at worst suspected insider trading by market players who sit on a Treasury Borrowing Advisory Committee.

Barclays' Roberts recalled a similar flap earlier this month, when the Treasury decided to flood the market with more 10-year note to ease a liquidity logjam caused by failed trades after the Sept. 11 attacks on Washington and New York.

"When they did the reopening of the 10-year, there was advance information on the Street. There's advance information here, and so there are a number of people on the Street who are pretty upset about it," Roberts said.

((U.S. Financial Markets Desk, 646 223 6323))

For related news, double click on one of the following codes:

[MNI] [E] [U] [M] [T] [D] [NAT] [RNP] [DNP] [PTD] [CRD] [US] [DBT] [GVD] [WASH] [FIN] [BNK] [DRV] [AGN] [MUNI] [MTG] [LEN]  
[RTRS]  
[US30YT=RR\c]

For related price quotes, double click on one of the following codes:

<US30YT=RR>

Wednesday, 31 October 2001 15:28:21

RTRS [nN31550341]

CONFIDENTIAL TREATMENT  
REQUESTED BY MASS  
FINANCIAL SERVICES CO.  
W 000464

SECNOTH00130125

**Exhibit EE**

**Minutes of the Meeting of the  
Treasury Borrowing Advisory Committee  
of the Bond Market Association  
(January 31, 2001)**

## **MINUTES OF THE MEETING OF THE TREASURY BORROWING ADVISORY COMMITTEE OF THE BOND MARKET ASSOCIATION**

January 30, 2001

The Committee convened at 10:15 a.m. at the Treasury Department for the portion of the meeting that was open to the public. All members were present except Mr. Lyski. The Federal Register announcement of the meeting and a list of Committee members are attached.

The Committee was welcomed by the Deputy Assistant Secretary for Federal Finance, Michael Paulus. John Auten, Director, Office of Macroeconomic Analysis, summarized the current state of the U.S. economy (statement attached). Fred Pietrangeli, Senior Economist for the Office of Market Finance, presented the chart show, updating Treasury borrowing estimates and historical debt and interest rate statistics.

The public meeting ended at 10:40 a.m.

The Committee reconvened in closed session at the Madison Hotel at 11:20 a.m. All members were present except Mr. Lyski. Deputy Assistant Secretary Paulus gave the Committee its Charge, which is also attached.

The Committee began by discussing the question in the charge regarding other adjustments to Treasury's future borrowing schedule given the continuing projected improvement in the fiscal situation. The Committee felt that the elimination of the 52-week bill was preferable to reducing the frequency of 2-year note issuance citing the same reasons originally stated by the Committee in the May 4, 1999 Report to the Secretary. First, the 52-week bill provided the least utility to the Treasury and to the market, relative to other regular offerings. Second, there are substantial secondary market alternatives, in terms of the supply of short coupons to meet investor needs in the 1-year maturity. Third, the timing of Treasury's cash flow requirements favor preserving the monthly issuance of 2-year notes to help meet the pattern of sizeable early month cash drawdowns for regular benefit payments, as well as monthly retirements of previously issued 5-year notes. Fourth, the market is expecting the 52-week bill to be eliminated. By unanimous consensus the committee agreed that the elimination of the 52-week bill should be the next adjustment to the borrowing schedule.

Next, the Committee considered the large swings in the Treasury cash balances. The idea of possibly issuing a 4-week bill on a weekly basis was raised by Deputy Assistant Secretary Paulus. The Committee noted that cash management bills tend to be an expensive means of financing; a regular 4-week bill issued weekly could serve to help mitigate large swings in cash balances so that reliance on large expensive CMB financing could be reduced. These bills could be issued weekly along with the regular weekly 13- & 26-week bills and vary in size between \$6 billion to \$16 billion. One member felt that there would be little interest in a 4-week bill with an issue size less than \$6 billion. Another member noted that the 1-month point on the yield curve tends to be very liquid and that such an instrument might be well received as long as the issue size meets a minimal liquidity threshold. The committee generally felt that the 4-week bill idea had merit and warranted further exploration.

Following the discussion of short-term financing alternatives, the Chairman raised the topic of longer-term financing, particularly 30-year bond issuance. Some members felt that it was illogical to be issuing 30-year debt when the latest Administration forecasts indicated that the debt would be paid off in about 10 years. They argued that potential costs savings to Treasury from eliminating the 30-year bond would be substantial and that re-entry into this market, should Treasury need to, would be fairly easy since markets adapted quickly. Others argued that a riskless 30-year benchmark should be maintained because it provided a public utility function in that it increased capital markets efficiency; alternatives such as 30-year swaps were much less liquid. Some members remained skeptical about the budget and policy outlook and believed that the near-term elimination of the 30-year bond was

not justified. Others suggested that the 30-year bond should be maintained in order to finance the payment of social security benefits at a later date.

The committee held an informal vote regarding the elimination of the 30-year after the August reopening. The informal vote was 11 to 6 with one abstention for elimination of the 30-year after August refunding. The Committee refrained from issuing a formal recommendation at this time until the fiscal situation became clearer.

There was a brief discussion by Committee members regarding changes to handling of FIMA accounts in Treasury auctions. The Committee recommended that the Treasury briefly address the pending changes at the quarterly press conference to provide clarification to market participants.

Regarding the composition of the quarterly refunding, by a unanimous vote, the Committee recommended a reopening of the 5-3/4 percent 5-year notes of 11/15/05 in an amount of \$11 billion and an \$11 billion issue of a new 10-year note. Finally, the Committee unanimously recommended issuing a new 30-year bond in an amount of \$10 billion. Looking at the remainder of the January-March quarter, the Committee recommended that 2-year notes be increased to \$11 billion for February and March, and that weekly bills be reduced from \$24 billion level to \$22 billion level starting in March.

The Committee's recommendations for the April-June quarter are in the attached table.

The meeting adjourned at 12:25 p.m.

The Committee reconvened at the Madison Hotel at 6:00 p.m. All members were present except Mr. Lyski. The Chairman presented the Committee report to Deputy Assistant Secretary Paulus. A brief discussion followed the Chairman's presentation, but did not raise significant questions regarding the report's content.

The meeting adjourned at 6:15 p.m.

*Paul F. Malvey, Director  
Office of Market Finance  
January 30, 2001*

## **Attachments**

### **Certified by:**

James R. Capra, Chairman  
Treasury Borrowing Advisory Committee  
of The Bond Market Association

Last Updated January 30, 2001

January 30, 2001

## COMMITTEE CHARGE

The Treasury would like the Committee's specific advice on the following:

### Treasury financing

- The Administration's FY 2002 Economic Outlook, released on January 16, projects a surplus of \$256 billion for FY 2001, compared to the Midsession review estimate of \$228 billion. Many private sector estimates are even higher. Given the fiscal forecasts, Treasury needs to make additional adjustments to its financing plans this year. In the past, the Committee has recommended that the next adjustment to its borrowing schedule should be either the elimination of the 52-week bill or a reduction in the frequency of 2-year notes. What would you recommend as the next adjustment to Treasury's financing calendar?
- In the process of paying down the marketable debt held by the public, the Treasury has sought to distribute the reduction in borrowing across various maturities in an effort to maintain large, liquid benchmark issues. In the process, the Treasury has reduced the number of coupon security auctions from 39 to 25 per year, and it has reduced the number of 52-week bill auctions from 13 to 4. The reduced number of financing opportunities, and larger swings in net revenues, has contributed to an increase in the magnitudes of the variations in Treasury's cash balances. What actions, if any, would the Committee recommend to help dampen the swings in Treasury cash balances?
- The composition of a financing to refund approximately \$25.1 billion of privately held notes maturing on February 15 and to raise approximately \$5-7 billion in cash in 5-year and 10-year notes and 30-year bonds.
- The composition of Treasury financing for the remainder of the January-March quarter and for the April-June quarter.

**Federal Register / Vol. 66, No. 7 / Wednesday, January 10, 2001 / Notices**

## **DEPARTMENT OF THE TREASURY**

### **DEBT MANAGEMENT ADVISORY COMMITTEE MEETING**

Notice is hereby given, pursuant to 5 U.S.C. App. §10(a)(2), that a meeting will be held at the U.S. Treasury Department, 15th and Pennsylvania Avenue, N.W., Washington, D.C., on January 30, 2001, of the following debt management advisory committee:

The Bond Market Trade Association  
Treasury Borrowing Advisory Committee

The agenda for the meeting provides for a technical background briefing by Treasury staff, followed by a charge by the Secretary of the Treasury or his designate that the committee discuss particular issues, and a working session. Following the working session, the committee will present a written report of its recommendations.

The background briefing by Treasury staff will be held at 9:00 a.m. Eastern time and will be open to the public. The remaining sessions and the committee's reporting session will be closed to the public, pursuant to 5 U.S.C. App. §10(d).

This notice shall constitute my determination, pursuant to the authority placed in heads of departments by 5 U.S.C. App. §10(d) and vested in me by Treasury Department Order No. 101-05, that the closed portions of the meeting are concerned with information that is exempt from disclosure under 5 U.S.C. §552b(c)(9)(A). The public interest requires that such meetings be closed to the public because the Treasury Department requires frank and full advice from representatives of the financial community prior to making its final decision on major financing operations. Historically, this advice has been offered by debt management advisory committees established by the several major segments of the financial community. When so utilized, such a committee is recognized to be an advisory committee under 5 U.S.C. App. §3.

Although the Treasury's final announcement of financing plans may not reflect the recommendations provided in reports of the advisory committee, premature disclosure of the committee's deliberations and reports would be likely to lead to significant financial speculation in the securities market. Thus, these meetings fall within the exemption covered by 5 U.S.C. §552b(c)(9)(A).

The Office of Financial Markets is responsible for maintaining records of debt management advisory committee meetings and for providing annual reports setting forth a summary of committee activities and such other matters as may be informative to the public consistent with the policy of 5 U.S.C. §552b.

*Lee Sachs*

*Assistant Secretary*

*(Financial Markets)*

Dated: January 30, 2001

## **Treasury Borrowing Advisory Committee of the Public Securities Association**

### **Chairman**

James R. Capra

President

Capra Asset Management, Inc.  
555 Theodore Fremd Avenue, Suite C-204  
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### **Vice Chairman**

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Managing Director

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**Exhibit FF**

**Letter from Thomas M. McGivern, Office of  
General Counsel, Department of the Treasury,  
to John A. Shope, Foley Hoag LLP  
(November 2, 2006)**



DEPARTMENT OF THE TREASURY  
WASHINGTON, D.C. 20220

November 2, 2006

BY E-MAIL AND FAX

John A. Shope, Esq.  
Foley Hoag LLP  
Seaport World Trade Center West  
155 Seaport Boulevard  
Boston, Massachusetts 02210-2600

Subject: Request for the deposition testimony of Treasury Department employee Elnora Bowser in *Securities and Exchange Commission v. Steven E. Nothern* (D. Mass., Case No. 05-10983)

Dear Mr. Shope:

The Department of the Treasury is in receipt of your August 16, 2006 letter that requests the deposition testimony of Treasury employee Elnora Bowser, among others. The August 16 letter was submitted pursuant to Treasury Department regulations found at 31 C.F.R. §§ 1.8-1.12 (commonly known as Touhy regulations, *see also United States ex rel. Touhy v. Ragan*, 340 U.S. 462 (1951)).

We have carefully reviewed and considered your letter pursuant to Treasury's Touhy regulations. Following this review and consideration, we deny your request to depose Ms. Bowser. As explained below, we found that the letter you submitted to Treasury fails to demonstrate, among other things, that Ms. Bowser's deposition testimony is genuinely necessary to the proceeding, is unavailable from other sources, and is not unduly burdensome.

- *The letter fails to demonstrate that the information requested is genuinely necessary to the proceeding.* Your letter does not demonstrate that Ms. Bowser is likely to possess information necessary to prove or disprove the allegations in this case. All of the topics for which you seek to depose Ms. Bowser have been addressed in Treasury's document production and in deposition testimony by a number of other current and former Treasury employees. Ms. Bowser's role was extremely limited. For example, a document produced by Treasury indicates that Ms. Bowser only cleared Peter Davis into the Treasury building one time, while Lula Tyler cleared Davis into the Treasury building a number of times. The deposition testimony of Paul Malvey (page 132) and Lula Tyler (page 30) demonstrates that this was not normally Ms. Bowser's responsibility. Instead, she performed this function only once when Ms. Tyler was not available. Since you have already deposed Ms. Tyler, it is unnecessary to also depose Ms. Bowser.
- *The letter fails to demonstrate that the information you seek from Ms. Bowser is unavailable from other sources.* Not only is the information you seek from Ms. Bowser available from

other sources, such as documents we provided in response to the SEC's Touhy request that also were sent to you, you also already have received such information from current and former Treasury employees in deposition testimony. Receiving the same information yet again simply adds to the excessive burden Treasury already has bore in responding to this case. For example:

- Information on Treasury's policies and procedures on "embargoes" can be found in the deposition transcripts of Tony Fratto (pages 37-64), Elizabeth Holahan (pages 44, 46-50, 60-61, 63), Peter Fisher (pages 101-107), Roger Anderson (pages 38-42, 47-49, 54), Brian Roseboro (pages 28-29, 31-35), Frances Anderson (pages 59-61, 90-91), Lula Tyler (pages 57-59) and Paul Malvey (pages 40, 99-102).
- Information on Treasury's policies and procedures on maintaining the confidentiality of market-sensitive information can be found in the deposition transcripts of Tony Fratto (pages 38-41, 85), Brian Roseboro (page 85), Paul Malvey (pages 255-256), Roger Anderson (pages 38-40), Jill Ousley (pages 77-80), and Elizabeth Holahan (pages 33-34, 44-46, 61).
- Information on the policies and procedures that specifically were followed on October 31, 2001 can be found in the deposition transcripts of Tony Fratto (pages 48, 94, 128-129, 156-171), Paul Malvey (pages 60-61, 79-85), Peter Fisher (pages 99-100, 114-122), Brian Roseboro (pages 80, 84-85), Elizabeth Holahan (pages 53-54, 101, 106-111, 113-116), Frances Anderson (pages 56, 58, 68-70, 79-100), and Lula Tyler (pages 98-100, 102).
- There is no information from any current or former Treasury employee to indicate that there was any written confidentiality agreement between Peter Davis and the Treasury Department. In fact, all these witnesses have denied that any such agreement existed, and searches of Treasury documents have failed to reveal evidence of any such agreement. This topic has been covered numerous times with current and former Treasury employees, all with the same conclusion that no such document existed. See the deposition transcripts of Roger Anderson (pages 100-101), Tony Fratto (pages 176-177), Jill Ousley (page 49), Elizabeth Holahan (page 141), and Paul Malvey (page 114).
- Information on Peter Davis's authority to attend Treasury conferences generally can be found in deposition transcripts of Elizabeth Holahan (pages 115-116, 137-138), Lula Tyler (pages 48-50, 54-57, 59), Roger Anderson (pages 53-64), Paul Malvey (pages 43, 90-92, 98-99), and Tony Fratto (pages 171-177, 180, 183-184).
- Information on how Davis was specifically able to attend the conference on October 31, 2001 can be found in the deposition transcripts of Elizabeth Holahan (pages 115-116, 137-138), Lula Tyler (pages 99-105), Paul Malvey (page 146), and Tony Fratto (pages 172-177).
- *The request to depose Ms. Bowser is unduly burdensome.* Treasury staff have dedicated hundreds of hours and hundreds of thousands of dollars to matters pertaining to this case in which the Treasury Department is not a party, including, among other things:
  - searching for hard- and soft-copy records, including restoring former employees e-mails, protecting privileged material, and producing documents;
  - considering your Touhy request for the deposition of current and former Treasury employees;
  - helping you to locate some of these former Treasury employees and coordinating with all parties to arrange mutually convenient times for their deposition; and

- attending the depositions of eight current and former Treasury employees, including Treasury's Assistant Secretary for Public Affairs, and traveling to New York (twice), New Jersey, and Florida for these depositions.

You have shown no restraint in requesting testimony on the same topics again and again from current and former Treasury employees. Deposing another current Treasury employee on these topics – many of which are not in dispute and already have been addressed numerous times in documents provided by Treasury and in the deposition testimony of current and former Treasury officials – imposes an undue burden on the Department.

To reiterate, Ms. Bowser is not authorized under applicable Treasury Department regulations to provide the requested testimony, and may not be compelled to testify. *See Bobreski v. EPA*, 284 F. Supp.2d 67, 73-74 (D.D.C. 2003) (agency employee cannot be forced to testify if an agency with valid Touhy regulations considers requests for testimony using relevant data and provides a rational basis for its decision).

The foregoing objections are not exclusive, and we reserve the right to assert further objections as appropriate.

If you have further questions, please contact me at 202-622-2317.

Sincerely yours,

*Thomas M. McGivern*

Thomas M. McGivern

cc: Erica Williams, Esq.  
John Rosetti, Esq.  
U.S. Securities and Exchange Commission

Nicholas Theodorou, Esq.  
Robert Toone, Esq.  
Foley Hoag LLP